S. Hrg. 99-812, Pt. 2

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

THE IMPEACHMENT OF HARRY E. CLAIBORNE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, OF HIGH CRIMES AND MISDEMEANORS

AUGUST 15 TO SEPTEMBER 23, 1986

Part 2 of 4 Parts

Printed for the Use of the Senate Impeachment Trial Committee

U.S. GOVERNMENT PRINTING OFFICE
63-835 O WASHINGTON : 1986

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, DC 20402

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No.
)
vs.) August 2, 1984
) 9:30 a.m.
HARRY E. CLAIBORNE,)
)
Defendant.)
)

TRANSCRIPT OF OPENING STATEMENTS

Before HONORABLE WALTER E. HOFFMAN, and a jury.

APPEARANCES:

For the Government:	STEVEN A. SHAW, ESQ. WILLIAM C. HENDRICKS, III, ESQ. JAN N. LITTLE, ESQ.
For the Defendant:	OSCAR B. GOODMAN, ESQ. WILLIAM J. RAGGIO, ESQ. J. RICHARD JOHNSTON, ESQ.
REPORTED BY:	SUZANNE KUES ROWE CSR NO. 127

CERTIFIED TO BE A TRUE COPY
[illegible] Clerk
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OFFICIAL AND GENERAL COURT REPORTERS
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RENO, NEVADA, THURSDAY, AUGUST 2, 1984, 9:30 A.M.

-o0o-

(The jury was duly sworn.)

THE COURT: With these opening remarks, Mr. Hendricks, I believe you will have the opening statement in behalf of the Government and you may proceed.

MR. HENDRICKS: Ladies and gentlemen, counsel, I feel privileged to be here this morning to begin this case. It's an important matter which you will hear over the next week or so. The case is United States versus Harry E. Claiborne.

Harry E. Claiborne, the defendant in this case, is the United States District Court Judge for the District of Nevada.

For the next few minutes, what I would like to do is describe to you what the case is about and the kind of evidence that you are going to hear from the Government during the course of its case in chief. What the case is about is simple. The Government's contention is, and the evidence that you are going to hear is that the case is about false statements made by Harry E. Claiborne. False statements to the IRS, Internal Revenue Service; false statements made to the Judicial Ethics Committee; false statements to other individuals.

Now, with respect to the evidence. The evidence in the case will show that for many years prior to 1979, Harry E. Claiborne was a defense attorney and he lived and worked in Las Vegas, Nevada. During that period of time, you will hear and see evidence that he had a substantial income.

In 1977, for example, his income from legal fees was $375,000 approximately. During that period of time, Mr. Claiborne had his accounting work done by an individual named Joseph Wright. Mr. Wright is a public accountant, and he is located in Las Vegas, Nevada.

It will be important for you to learn exactly how Mr. Wright did his bookkeeping because it relates to the filing of the income tax returns for the year 1979, which is the first count that you will be dealing with in this case.

Here's how the books were prepared by Mr. Wright. Every month Mr. Wright, the accountant for Judge Claiborne, would receive checks and checking account statements from Judge Claiborne's banks. After he received those, he would treat all the deposits to those checking accounts as income. The reason he did that is because Mr. Wright and Mr. Claiborne had a, an agreement whereby all deposits to that account would be treated as income for accounting purposes.

If Mr. Wright had any questions regarding a particular item, particular deposit, he would write or call then Mr. Claiborne on the phone and ask him about it so that he would be perfectly sure in his mind as to the proper treatment for deposit.

All of those questions that Mr. Wright had, he would make a conscientious effort to resolve.

You will hear testimony that he did that.

Now, you can tell that every month this would be done so that for a twelve-month period, Mr. Wright would have generated twelve monthly statements, twelve reconciliations for the income that then Mr. Claiborne had.

At the end of the year, Mr. Wright would begin the process of putting those twelve monthly statements together for purposes of preparing then Mr. Claiborne's tax returns for the year.

During that period of time, there were occasions when Mr. Wright would have other questions. Questions as to the treatment of various items. He would resolve those questions by sending notes to Mr. Claiborne. He would resolve those questions in some cases by calling him on the phone, but you will see and hear testimony he was very careful to resolve any questions he had in his mind.

Finally, there was a final meeting every year between the accountant, Joseph Wright, and Mr. Claiborne in which they would go over the tax returns. Judge Claiborne would sign the tax returns which had been prepared by Mr.

Wright.

That practice was engaged in for virtually thirty years from the late 1940's through the period of time through 1977, 1978, 1979 that you will hear about in this case.

Now, in 1978, you will hear that this same practice of careful bookkeeping was engaged in by Mr. Wright as it related to the maintenance of Mr. Claiborne's tax returns. In the summer of 1978, you will hear that Judge Claiborne and, then Mr. Claiborne, learned that he would soon become a federal judge; that he would be appointed to the federal bench. And he started taking action in the summer of 1978 to leave his law firm.

Now, you will hear that at that time he was not a sole practitioner. There were two other attorneys that worked for him in the law firm. Those two people were James Brown, whose testimony you will hear, and Annette Quintana, another attorney, working for Judge Claiborne.

Now, at the time, 1978, some of the cases that Judge Claiborne was working on were also being worked on by James Brown so that they worked together on some of the cases, and some of the cases that Judge Claiborne was working on were also being worked on by Annette Quintana. So prior to Judge Claiborne's leaving his law firm in Las Vegas to become a United States District Court Judge, he had conversations with Annette Quintana and James Brown and they agreed that, he had an agreement with Mr. Brown, for example, that as to those cases where they had worked on them together that Mr. Brown could continue to work on the case, but that any income that would be received from the case after that, that year, the next year or the year after that would be split between Mr. Brown and Judge Claiborne.

Similarly, Judge Claiborne reached an agreement with Annette Quintana that any income that she would receive from the cases that they had worked on prior to his departure in 1978, 1979 and off into the future, that that income would be split between Judge Claiborne and Annette Quintana. So on September 1st, 1978, you will hear that Judge Claiborne took the bench.

Now, one of the things that happened as a result of Judge Claiborne taking the bench is that there was a very substantial decrease in his income. Because he was no longer in private practice, his income as a federal judge was something like $55,000, and you will see the exact figures, quite a substantial decrease from the figure that I have mentioned to you for 1977, $375,000.

In 1979, ladies and gentlemen, was the first year, the first complete year that Judge Claiborne was a United States District Court Judge and during that year, 1979, Judge Claiborne had two kinds of income. Fundamentally, one was his judicial salary of about $55,000, and another source of income, you will hear, were payments coming in from the legal fees, such as the legal fees he had an arrangement with Annette Quintana on, such as the legal fees that came in from James Brown as a result of the agreement they had back in 1978.

Now, something happened about that time. One of the things that happened was, you will hear testimony from Mr. Wright, that Judge Claiborne stopped providing him, ceased to provide him with that monthly information regarding deposits, regarding legal fee income.

You will also see that Judge Claiborne, in 1979, began a practice of, instead of depositing his accounts, his checks, legal fee income checks, to his account, he began the process of cashing those checks, and you will see where he cashed the checks. A great many of these checks were cashed at casinos in Las Vegas, Nevada, and elsewhere.

Now, in early -- for the tax year 1979, this process, this pattern continues and in 1980, early 1980, Mr. Wright began the process of putting together as much information as he could so that he could prepare Judge Claiborne's 1979 income tax returns.

You will hear testimony as to exactly what Mr. Wright did.

First, he obtained from Judge Claiborne's account information relative to deposits made to his bank account. He then obtained from Judge Claiborne at his request a handwritten list of all of what he believed to be all of Judge Claiborne's legal fee income for 1979.

You will see that he wrote careful notes to Judge Claiborne asking questions, soliciting information as to any other legal fee income.

You will hear that Mr. Wright personally spoke with Judge Claiborne and as a result of this entire process of notewriting, careful attempt to accumulate documents, that Mr. Wright prepared the income tax returns which he later went over with Judge Claiborne, which Judge Claiborne signed as true and correct.

Now, on this income tax return for 1979, Judge Claiborne says that his total income, total income is $80,227.04. Now, you will notice that most of that is judicial salary and that a small amount of that, some 20-some thousand dollars is legal fee income.

We will prove to you, ladies and gentlemen, through our evidence that this statement was intentionally false. In order to avoid paying tax on what was really the entire amount of his legal income, in order to keep the salary up, Judge Claiborne did not tell Mr. Wright what the true amount of his legal fee income was for 1979. He did not tell the IRS what the true amount of the income was for 1979, and we will prove to you beyond any doubt whatsoever that these, this income we are talking about is not just an occasional small check. It's a consistent pattern which will convince you that that falsity was intentional.

For example, January 5th, 1979, Mr. Claiborne received a $3,381 check from James Brown. That check was not reported to Mr. Wright.

January 19th, 1979, Mr. Claiborne, Judge Claiborne received a 17,500 check from Mr. Brown. Only about half of that was reported.

January 26th, 1979, Judge Claiborne received an $833 check from Mr. Brown. That check was not reported. It was cashed at a casino in Las Vegas.

On the 15th day of February, 1979, Judge Claiborne received an $1106 check from Mr. Brown. That check was not reported. It was cashed in Las Vegas at a casino.

On the 31st day of August, 1979, Judge Claiborne received a $2,905 check from Mr. Brown pursuant to the agreement that they had. That check was not reported; it was cashed at a casino in Las Vegas.

On the 13th day of November, 1979, Judge Claiborne received a $3,011 check from Mr. Brown. That check was not reported. It was cashed at a casino in Las Vegas. There were other checks from Mr. Brown which you will see as evidence in this case.

Out of nine checks that Judge Claiborne received in 1979 from Mr. Brown, he reported one and a half.

Now, there is more income in 1979. You remember I told you about Annette Quintana, an attorney who worked for Judge Claiborne before he took the federal bench, on the 16th of January, 1979, she sent to Judge Claiborne a $1,000 check as part of their agreement. That check was not reported by Judge Claiborne. It was cashed.

On the 12th day of February, 1979, Annette Quintana sent another check for $1,000 to Judge Claiborne. It was not reported. It was cashed at a casino.

On the 9th day of March, 1979, Annette Quintana sent another $1,000 check to Judge Claiborne. It was cashed at a casino.

On the 14th day of May, 1979, Annette Quintana sent another check for $1,000 to Judge Claiborne. It was not reported. It was cashed at a casino.

Out of five checks in 1979 that Annette Quintana sent to Judge Claiborne, he reported one. The rest were all cashed at casinos in Las Vegas and not reported.

Now, the first count that you are charged with resolving is a count which essentially charges Judge

Claiborne with having made a false statement on his 1979 income tax return.

That count will also be referred to technically as Count V.

That's the first one you are dealing with, but it's numbered as Count V. The element of that, what we are obliged to prove are that the defendant in the case filed a tax return, knowing it to contain false information. The second element we are obliged to prove that the defendant acted with the intention of evading the payment of his tax and, third, we are obliged to prove that the return, the tax return, the 1040, same return that you all file, was filed with a declaration that it was made under penalty of perjury and we will prove from the very face of the return, that all the returns contain that notation on it.

Now, let's pass on to the next year, 1980.

In 1980, which is the second count that you will be dealing with, technically it's called Count VI, in 1980, Judge Claiborne continued to receive fundamentally two kinds of income. His judicial salary, which is about the same amount, around $55,000, and legal fee income from cases that he had worked on before he took the bench.

You will see that in 1980 he was giving his accountant, Joseph Wright, virtually no information at all during the year.

You will further see that Judge Claiborne received during 1980 large items of legal fee income. In early 1980, Joseph Wright began again the process of putting together documents and other information from which he would attempt to prepare Judge Claiborne's tax returns. This is Joseph Wright who had been Judge Claiborne's accountant for some thirty years.

Joseph Wright attempted to contact Judge Claiborne at his chambers in Las Vegas, and he was unsuccessful. He got no response from Judge Claiborne.

At about that time, Judge Claiborne, in the spring of 1981, filed a personally prepared request for extension in which he estimated his tax liability for that year to be a $42,000.

Joseph Wright continued in the spring of 1981 to try to get through to Judge Claiborne. No response. Never. Judge Claiborne did not call Mr. Wright, did not contact Mr. Wright and that was the last Mr. Wright heard from Judge Claiborne.

Now, the income tax return, the form 1040 that was filed for 1980 was filed on the 15th day of June, 1981, and it reports zero legal fee income. Not one penny. You will see that return.

It's our contention that that statement, that return is false. It reports $54,251 as total income and you will see that that's,almost all that is judicial salary income that, when he gets his judicial salary, he gets a W-2 like a lot of salaried employees do. Most of that is judicial salary income. We will prove that that statement, the total income statement on that return, $54,251 is intentionally false and we will prove that that statement was made in order to intentionally evade, avoid the payment of taxes.

Now, we will also prove to you a number of specific items of income that Judge Claiborne intentionally failed to report for that year, 1980. You will see the circumstances surrounding the receipt of those items of income.

For example, in January of 1980, Judge Claiborne received from an attorney in Northern Nevada, Peter Echeverria, a $42,452 check which represented Judge Claiborne's portion of the legal fee which had been generated by legal work performed before he took the bench. That check was not reported. That was income for the year 1980.

Later in the year you will see evidence that Judge Claiborne wrote a letter to an attorney representing the estate of a Sidney Wyman in which he said, and I am paraphrasing, "That for the first time in my life, I am 'desperate for money.'" "Desperate for money."

In response to that letter of desperation, ladies and gentlemen, Judge Claiborne received on or about the 15th day of August, 1980, a check from the attorney representing the estate for $37,500. That check was taken to a casino in Las Vegas and cashed, and it was not reported.

There are additional items. Mr. Brown, you will recall the attorney, $888.30 check on the 6th day of August, 1980, unreported. Another check for $7,071.19 on the 7th day of November, 1980; unreported.

The contention again, that the statement that Judge Claiborne made as to his true total income on that tax return for 1980 was false and the elements that we are obliged to prove for that count are the same as for the first count that you will be dealing with.

That is, we have to prove that there is a material falsity in the return that's filed. We have to prove that it was intentionally filed for purposes of avoiding and evading taxes, and we have to prove that that return was filed under penalty of perjury, and we will prove those elements to you.

Finally, the third count of the three that you will be dealing with, which is technically called Count VII is a statement that, relates to a statement made by Judge Claiborne in a different context. That is, a statement that relates to his obligations under the Ethics in Government Act.

Now, this Act, the Ethics in Government Act, requires that all federal judges and other people, but here we are just dealing with federal judges, that all federal judges report certain large transactions, including any loans which they have, obligations, loan obligations in excess of $10,000.

You will hear from the stand, from a United States District Court Judge that the purpose of this statute is to promote honesty and to avoid not only conflicts of interest, but even the appearance of a conflict of interest in the group of people that hold the high position of the United States District Court Judge.

You will hear that when, back in 1978, when Joseph Wright was performing his accounting responsibilities, accounting duties for Judge Claiborne, that he saw a $75,000 deposit item on the 31st of August, 1978.

You will hear that Joseph Wright discussed that $75,000 deposit because he wasn't sure what it was. You will recall I told you that when Mr. Wright had any question about what a deposit item was or any other item that he would check it out with Judge Claiborne. So, Mr. Wright had a conversation with Judge Claiborne in which he asked him what that $75,000 figure was. Judge Claiborne told Mr. Wright that that $75,000 figure was a loan which he had obtained to pay his income tax liability for the previous year.

Now, let me just repeat that because we are getting a little confused on the years. This is 1978. He had an income tax liability for the previous year, 1977, which he had not paid yet. So what he's saying is that he got a $75,000 loan to pay the income tax liability for the previous year. Therefore, Mr. Wright, as a result of what he heard, did not treat the $75,000 figure as income since it was a loan.

You will see that Mr. Wright, upon being told this by Judge Claiborne, wrote this down on a piece of paper that he was using to put down the remarks and responses that he received from Judge Claiborne.

He put it down as a loan to pay income tax liability.

We will also show you that that money, the $75,000, was deposited to Judge Claiborne's account on the 31st day of August, 1978. You will see the deposit items, you will see the monthly statement, and you will also see that that money was in fact used to pay a tax liability for the preceeding year.

We will show you what that deposit consisted of and what it consisted of, I will tell you, is 750 one-hundred dollar bills. Very interesting transaction. And you will see it was a memorable transaction. Seven-hundred and-fifty one-hundred dollar bills.

Well, in June of 1979, Judge Claiborne filed an Ethics in Government report to the Judicial Ethics Committee, and on that report, he is obliged to report any loan that's outstanding in excess of $10,000. When he was asked to report about that, he reported none. That he had no outstanding loans.

We will prove to you, ladies and gentlemen, that that statement was false and that's the statement that's charged in the third count that you will be dealing with during the course of this trial.

Now, in order for us to prove this case, it's our obligation to prove that that statement made by Judge Claiborne was a false,constituted a false writing or document, which it was, and we will prove that. We are obliged to prove that it was not unintentionally made, that it was intentionally made, knowingly made, known to Judge Claiborne to contain false information as to important facts, and we will prove that. The importance of those facts.

And we are obliged to prove that the facts related to a matter within the jurisdiction of the Judicial Ethics Committee. These are the three counts which you will be dealing with during the course of this case, and that's the kind of evidence that you are going to hear from the Government.

Now, ladies and gentlemen, we have an obligation, the Government does, to prove its case beyond a reasonable doubt. We accept that responsibility, and we think that when you have heard all of the evidence in the case, that you will agree that we have met our responsibility and our burden. And at that time, we will have an obligation and opportunity to stand before you and argue the case.

Thank you very much.

THE COURT: Mr. Goodman?

MR. GOODMAN: Thank you, your Honor.

Your Honor, if it please the Court, Judge Claiborne, ladies and gentlemen of the jury, we are going to be spending the next several days together in a matter which is of great importance not only to the administration of justice, but also to my client, Harry Claiborne, a United States District Court Judge.

Sometimes I believe that so much is asked of a jury that they're expected to absorb theories of law that the prosecution and defense counsel will be arguing about. Matters which will trouble his Honor perhaps and then expect to understand the instructions which the Court gives to you at the conclusion of the case.

At the same time, you have the obligation and the burden of being able to sift out the facts of the case. You are the fact-finder.

You are the judges as far as the facts of this case. You are the ones who will decide where the truth lies at the conclusion of the evidence.

What you have heard is one side in an adversarial system.

As his Honor explained to you earlier, the defendant, Judge Claiborne, has no obligation whatsoever to put on any evidence. He can rely exclusively on the proposition that the Government, the prosecution has failed to meet their burden of proof beyond a reasonable doubt. However, that is not the tactic which we have decided upon.

Ordinarily, a defendant may not give an opening statement or may reserve an opening statement. In this particular instance, however, we owe to you the opportunity to set forth what is often referred to as a roadmap for you to follow it, for you ~~to look for~~ certain help from the advocates, from the attorneys in the case, so that when the evidence comes in, you will be able to sift out from that evidence where the truth is, in order to take that into the jury room with you to make your ultimate resolution of the case.

Judge Claiborne did not start his career, the evidence will show, as a United States District Court Judge. this was to him the apex, the ultimate of his ambition.

This was a position which was sought by him as the crown to a legal career which spanned over many, many, many years, starting, the evidence will show, with Judge Claiborne actually being a police officer in Clark County, Nevada.

Then, a Deputy District Attorney in Clark County, Nevada, and a good Deputy District Attorney, upholding the law. And then Judge Claiborne shifted his career to that of the role of a criminal defense attorney, primarily, although he did handle other matters, in the day-to-day practice of law.

Judge Claiborne was well respected. The evidence will show the reason he was well respected is because he was an outspoken protector of the little man, and when he spoke out in his role as a criminal defense attorney, the evidence will show he spoke out against the prosecution, be it the State or if it was a federal case, against the Federal Government, or if it was an IRS case, against the IRS. If he felt that some injustice was being perpetrated upon one of his clients.

That did not make him popular. The reason this is relevant and important in your consideration is that Judge Claiborne himself knew, because of the role that he assumed while he was a practicing attorney, that he himself was a target of careful inspection by governmental agencies, and he carried that thought process as he assumed his responsibilities as a federal judge. He took that with him and perhaps unfortunately for him, when he performed his duties as a federal judge, he did not speak, he did not stop speaking out against what he considered to be injustices. And he saw himself continued as a potential target because of his forthrightness, because of that thought process. Judge Claiborne did something very interesting, which is important for you to bear with you during your consideration of the case, and the way you perceive the evidence in this case. And that is Judge Claiborne told his accountant of some thirty years, Joseph Wright, who will be referred to as Jay Wright on several occasions during the testimony, he told his accountant, Joseph Wright, in preparing the tax returns, over this thirty-year period while the Judge was a lawyer, while the Judge was on the bench, give the IRS the best of it.

The evidence will show that Judge Claiborne told Jay Wright, if there is a doubt, give the IRS the benefit of the doubt, because Judge Claiborne did not want to be hassled knowing full well that he was the target of these persons about whom he spoke. That's important. Because Judge Claiborne indicated to his tax preparers that he didn't want any problem whatsoever as far as the preparation of his tax returns, he wanted no hassle.

There is very little disagreement, the evidence will show, and our arguments will also reflect this at the conclusion of the case, between what happened as far as the objective criteria which will be presented to you, but your role as jurors is twofold. Because as Mr. Hendricks told you in his opening remarks and as the Court will instruct you, the element upon which V, VI and VII, the three counts with which we are concerned will focus is that of Judge Claiborne's intent concerning the acts with which he is charged. Whether or not he acted willfully with some kind of bad purpose; whether he intended to violate the law, and the only way you as jurors are going to be able to ferret out the truthfulness concerning the question of intent and the question of willfullness, is by putting yourself in the position of the person who is accused, and try to determine whether or not Judge Claiborne acted in a manner which violated the law.

It's not enough if you find that Judge Claiborne was careless or Judge Claiborne was negligent. You may not like that. And you may think that there is something wrong with it, but that's not why we are here. Why we are here is to determine whether or not Judge Claiborne violated three criminal counts, which are charged in Counts V, VI

VII in this case.

Count V concerns the 1979 tax return. I am often accused of speaking too quickly and going over person's heads because I get excited about the presentation on behalf of the person that I am representing. So what I would like to do is take my time in an effort for you to follow me very very carefully as to exactly what the proofs will be from the witness stand for your consideration.

On Count V, there will be a grievant between the prosecution and Judge Claiborne that Judge Claiborne received fees for work done before he became a judge totalling $41,072.93. These fees consisted of nine checks from James Brown and Annette Quintana. The checks received from Brown were from his law practice and the checks received from Miss Quintana were five cashier's checks of a thousand dollars each.

There is no quarrel with that proposition. As Mr. Hendricks told you, the evidence is going to show that Miss Quintana and Mr. Brown were associates of Judge Claiborne while he was in the private practice of law and these monies were received after Judge Claiborne assumed the bench on September the 1st of 1978.

Now, the evidence will show that the 1979 tax return, which was prepared by Jay Wright, reported only $22,332.87 of such fees. And we agree that in fact that was an incorrect report.

But because we are interested in the question of intent and willfullness, we must analyze how that figure appeared on the tax return, because it is our position, and we would expect that the Court will instruct you at the end of the case, that if in fact Judge Claiborne made full disclosure of the real situation as it existed at the time to his tax preparer, and he had a right to rely on that tax preparer, then Judge Claiborne satisfied his responsibility and did not have the type of mental thought process, the type of intent, the type of willfullness which would be required for the prosecution to meet its burden of proof beyond a reasonable doubt.

So the only issue, the only issue that we see from the defense point of view in this adversary system is whether or not Judge Claiborne intentionally filed an incorrect return.

The evidence will show that he did not. The evidence will show that the error in the return was attributable to Mr. Wright and not to Judge Claiborne.

And this is what you are going to hear from the witness stand. You are going to hear that some time before March 7th of 1980, which would be some time before the tax return was prepared, Judge Claiborne wrote to Mr. Wright, his accountant, and he said that he had to make an application to assume a mortgage and the lender, the person that was going to lend the money for the mortgage wanted a letter from Wright as to the amount of Judge Claiborne's earnings from his former private law practice for the years 1978, 1979 and 1980 to date, which means as of March the 7th of 1980. This is crucial because in his letter the Judge listed a series of bank deposits showing the date and amount of each deposit, and those deposits total $45,371.93. Once again, in his letter to Jay Wright, as of March 7th of 1980, Judge Claiborne tells him that the monies received from the private practice was $45,371.93.

Now, Mr. Hendricks made a point of a change of habit, I believe would be a fair characterization of what he was trying to express, after Judge Claiborne took the bench on September the 1st of 1978, because prior to that time, as you will recall, the evidence will show Mr. Wright received on a monthly basis all of Judge Claiborne's checks and deposit slips and made an analysis from that because Judge Claiborne had an active law practice at that time, and that's the way that Judge Claiborne kept his official records. But even at that time, Judge Claiborne had a unique personal manner in which he kept track of his financial affairs, and I guess the fairest way to characterize the manner in which he did this was he kept a financial diary. It wasn't for any formal purpose, but it was a way of keeping track of his particular financial transactions.

For instance, if he received one of these checks from Mr. Brown or he received one of these checks from Miss Quintana which he cashed over at the Horseshoe or the Golden Nugget or one of the casinos close to his office, what Judge Claiborne would do is he would make a little notation of it that the check was received, what it was for, who it was from, and he would put it in an envelope which was sitting in his desk drawer. At some later point in time, he would remove these sheets and he would then record them on his personal diary, for his own personal record, and that diary will be made available to you and you will see in that diary a complete financial tracking for Judge Claiborne's own personal purposes of all of the monies he received. Not only from Mr. Brown and Miss Quintana, but from other sources as well during the time in question.

What he did after he became a federal judge and didn't have this office staff of a secretary and a bookkeeper and a receptionist and two associates who were working for him, and he didn't have daily fees coming in as he did when he was in private practice, he relied while he was a Judge in keeping these sheets and making the record of the monies he received sporadically and it was from this record that he conveyed information to his tax preparers, and it was from this record, the evidence will show he conveyed the information truthfully and accurately, and giving the IRS and the Government the benefit of the doubt, as it pertained to the tax years in question here, 1979 and 1980.

Now, after he wrote the letter to Jay Wright on March the 7th of 1980, Wright then followed up, and there will be evidence to this effect, by sending to the lender, remember where Judge Claiborne needed these letters to get the mortgage, he sent a letter to Stanwell Mortgage on March the 7th of 1980 wherein Wright himself stated that the Judge's earnings from the private practice of law for the year 1979 were $45,371.93, the exact total of the bank deposits listed in the Judge's letter.

The next piece of evidence, we submit is the key stump. The crux of the defense as far as this count is concerned. It wasn't mentioned at all by Mr. Hendricks to you, but I want you to pay keen attention to the testimony concerning a letter written by Judge Claiborne to Jay Wright on April the 11th of 1980.

Now, Jay Wright is going to say perhaps that he doesn't remember this letter, but you have to look, I submit to you respectfully, at the totality of circumstances surrounding this letter of April the 11th of 1980 in order to determine the truth when you are making your evaluation as to whether the prosecution is able to prove its case beyond a reasonable doubt.

On April 11th of 1980, Judge Claiborne wrote to Wright enclosing a check for $8,000 dated April the 11th of 1980, made payable to the Internal Revenue Service which Wright had told him would have to be sent in with an application for an extension of time to file the 1979 return.

And in that letter, and the letter will be provided to you in evidence, in that letter Judge Claiborne stated and I quote, "fees received during 1979 for practice before I became a judge are $41,703.93."

This figure is just one dollar more than the amount that both the prosecution and the defense agree upon as being the correct figure which would have to be disclosed on the tax return.

Now, that letter of April 11th, 1980, got to Jay Wright's office by hand delivery. You will hear from Judy Ahlstrom who is Judge Claiborne's secretary, Judy Ahlstrom will testify that Judge Claiborne came into the office on the morning of April 11th of 1980, and asked Judy Ahlstrom to please get a copy of the W-2 form because Jay Wright needed it, would she please make a copy of a letter which Judge Claiborne was forwarding to Jay Wright for the purpose of enclosing the $8,000 cashier's check which was necessary for payment to the IRS with the W-2 form and the fact Judy Ahlstrom made a copy of the letter. In fact, Judy Ahlstrom went to Jay Wright's office and hand delivered that letter to the office.

Now, if that is not enough to have a check dated April 11th, 1980, the testimony of Judy Ahlstrom that these events took place on April 11th of 1980, the evidence will also show two other documents which were involved in the events of April 11th, 1980, because Judge Claiborne, having received a call from Jay Wright to come down to the office went down to Wright's office in the afternoon and he brought with him a $2500 check which had to accompany the estimated return, and he also dated the estimated return which Jay Wright forwarded to the IRS, and Jay Wright will also admit from the witness stand that he forwarded the $8,000 check which was brought over there by Judy Ahlstrom in the morning, and the check will also reflect that the same was deposited and received by the Internal Revenue Service.

Now, that's crucial, we submit, because that reflects the full disclosure which Judge Claiborne made to Jay Wright.

Now, Wright has difficulty, and this will be the subject of examination, has difficulty recalling when he saw the letter. He knows he saw the letter. He doesn't know when he saw the letter, but he must have mislaid the letter while Wright was preparing the Judge's 1979 tax return.

What did Wright do? He went back to his old method that he did in the old days where he had all the Judge's deposits and stubs and checks and he began to pull from those his analysis as to what the income must have been, ignoring completely the information which the Judge gave him to send to the lender or the mortgage and ignoring completely the April 11th, 1980, letter, and he concluded after taking out all these items that the Judge's income totalled only $22,332.87, and then what took place is conversations between the Judge and Wright where Wright was asking the Judge for information, and the Judge would provide Wright with information. Wright wanted to know how much income he got from the Judge. The Judge said, "Well, I gave you that information." And at that point in time, Wright came back with the $22,000 figure which he had pulled as a result of his own analysis without making reference to the other material which the Judge had given him and in doing so, the Judge ended up making notations to himself that instead of his original declarations to Wright in the amount of $41,000, the only monies he received was about $22,000.

Now, another contention with which there will be vigorous disagreement is that Mr. Hendricks told you that over the thirty-year period that Jay Wright prepared Judge Claiborne's returns, they went over the return each and every time and after a careful analysis and inspection, Judge Claiborne then signed the return.

I submit to you that the evidence will show exactly the contrary. I submit to you that after Judge Claiborne made his declaration, his full disclosure to Mr. Wright, Mr. Wright handled the information, gave it to Judge Claiborne and Judge Claiborne signed it virtually summarily relying on Mr. Wright and on occasion the evidence will show Judge Claiborne signed returns in blank, which Wright then filled in based on the information which Judge Claiborne gave him, and Wright filed those returns with the Internal Revenue Service.

Now, once again, perhaps shame on Mr. Wright; perhaps shame on Judge Claiborne, but as far as the law is concerned, if they were negligent or careless, that's not what we are here for. We are here to establish whether or not Judge Claiborne had the intent, the willfullness, the bad purpose to violate the law, and I submit to you that he did not. That he made the disclosures to Jay Wright and that Jay Wright was the one who filed the return, and Judge Claiborne had every reason in the world to rely upon him at the time that the return was filed.

Now, you are going to have to take those facts and apply those facts to the law at the conclusion of the case, so I ask you please to listen to the evidence very, very carefully and review the exhibits in order to fulfill your function as jurors.

As to Count VI, unfortunately, an event took place in Judge Claiborne's life which he would like to relive if he had the opportunity.

As I explained to you his careful recordkeeping procedures were not necessary because he wasn't receiving the income from his law practice on a day-to-day basis. Therefore, he concluded that it wasn't necessary because of Wright's busy schedule to continue with Jay Wright as his accountant, and he made this determination as a result of a happenstance. The Judge accompanied a former wife to her bookkeeper's office when she had to deliver certain papers to the bookkeeper. The bookkeeper's name was Jerry Watson. He was with a firm known as Lamb-Watson Consulting in Las Vegas, Nevada. The Judge was advised that his former wife was very satisfied with the services of Jerry Watson, and at the time that this delivery of documents was made, Miss Reese, the former wife, went out to the car and said, "Judge, Jerry Watson would like to see you. He would like to meet you. He has heard an awful lot about you." And the Judge went into an office which appeared to have all of the trappings of those for a responsible tax preparer, and the Judge and Mr. Watson recognized one another as being members of the same church, having seen each other there on Sunday religious sessions.

And there was a comradarie as a result of that and the Judge began to discuss business dealings in general without any particular purpose, and he was impressed with the eloquence and the apparent knowledge of this Jerry Watson.

He didn't do anything about anything at that time, but he began to think that Watson did have a grasp of real estate because Watson also handled real estate transactions, and they discussed the sale of the Judge's home when the Judge was going to receive a large amount of money, and how the tax benefits should be treated, and how the property should be apportioned, and there came a time that Judge Claiborne decided that he was going to leave his friend of longstanding, the busy Jay Wright, to go to Jerry Watson, who held himself out as an accountant, and when in fact, he was not a tax accountant, the Judge found out later on to his chagrin, but rather was a person who dabbled in all sorts of things, real estate, insurance, taxes, who had bookkeepers who prepared tax returns for his clients, but nevertheless at the time that the Judge was dealing with

Watson, the Judge treated Watson with the type of respect that one would give to a tax preparer who knew what he was doing and in going over all of the information which Watson requested from the Judge and Watson asked the Judge for tax returns going back to 1974 and '75 and '76, and he was going to review everything and make sure that everything was in order. At that time, the Judge wrote out very carefully, and this evidence will be in front of you, a listing of his entire financial situation for the tax year in question for the return for 1980, and on that document, you will see the Judge listed the sum of $88,500 from private practice. The item which the prosecution maintains was omitted from the return, the Judge made full disclosure of that to Watson on a document which was treated by Watson's bookkeeper. You will see writing on that document other than the Judge's, which makes reference to the $88,500. You will then see what I have to refer to virtually as an abortion or an abberation on the tax return in what is referred to as a Schedule D, which was prepared by one of Watson's bookkeepers, which makes reference to the income received from private practice and the point is, once again, perhaps shame on the Judge for not picking his tax preparer more carefully. Perhaps shame on Watson for holding himself out as being an expert tax preparer and knowing what he was doing. But the return was prepared and it was filed after the Judge made full disclosure of each and every cent.

As a matter of fact, $600 more than what he received as income from his private practice during that year after the Judge made full disclosure to Watson for the preparation of the return. Once again, we are going to get to the issue of willfullness and intent and the Court's going to instruct you on that, and I submit when you evaluate that entire situation under those circumstances, the prosecution will not have been able to meet its burden of proof beyond a reasonable doubt that the Judge did something which was criminal.

The last count, Count No. VII. It all comes down -- it all comes down to one of two words. If Judge Claiborne had an outstanding loan at the time that he filed his form with the Judicial Ethics Committee, he was required under law to make that known. If he did not have a loan outstanding, there was no such requirement.

If Judge Claiborne was given a gift under the circumstances as we submit to you took place, no such declaration was necessary on the Judicial Ethics form.

The Judicial Ethics form makes no reference to the $75,000 which Mr. Hendricks mentioned to you. The reason for that, there was no reason for Judge Claiborne to include the $75,000 on the Judicial Ethics form. What took place goes back to the procedure which apparently was utilized by Jay Wright without discussing with Judge Claiborne the various attribution, the source of monies in reviewing for the preparation of the tax return for 1979. Jay Wright saw a deposit of August the 31st of 1978 in the amount of $75,000 cash. He concluded from that, based on bits and pieces of information that this was not income, therefore, he took it upon himself to assume, based on his recollection that if it was not income, it was a loan.

Now, let me tell you how we belief such an assumption was arrived at.

Picture Judge Claiborne going on the bench on September the 1st of 1978, virtually having just a matter of weeks within which to assemble all of his affairs as far as his private practice are concerned, virtual chaos, the evidence will show, in his law office, trying to dispose of his practice, trying to make arrangements with Mr. Brown, his associate, Miss Quintana, his associate, to make sure that they are comfortable and they have a place to go, trying to get ready to wind up all of his affairs so he could assume the responsibilities of being a United States District Court Judge.

On August the 31st of 1978, the last day that Judge Claiborne was in his office, Jay Wright called him, and the Judge and Mr. Wright spoke together, and the Judge said to him, "Is there anything that I should do, because I am going on the federal bench tomorrow."

And Wright said, "Yes, have Ginny McElwain," who was the Judge's secretary, "have Ginny McElwain assemble the stubs and the deposit slips and the checks and get them over to me."

The Judge said, "Do I owe anything to the Internal Revenue Service?"

And Wright said, "Yes, you do owe about $72,000."

So the Judge said, "Well, I need to see the tax bill."

And Wright said, "Well, I have that."

And the Judge says, "Why don't you bring it down to the --"

And Mr. Wright comes down to the Judge's private law office on August 31st, 1978, and gives the Judge the tax bill and what does the Judge do once he gets it?

He says, "I am going to go over to the Horseshoe and get the money. I am going over to the Horseshoe to get the money."

Now, I submit that based on Wright's hearing that statement, he assumed without Judge Claiborne ever telling him that because of Judge Claiborne's relationship with people at the Horseshoe he was going to borrow money from the owners.

Now, that's his assumption and looking back years ago, I submit that's a reasonable construction of what took place based on the relationship between the parties.

Judge Claiborne never told him that he was going to borrow money. He never told him that. That was an assumption on Jay Wright's part, and Jay Wright, I submit to you, on his examination will testify that he can't ever recall any specifics of Judge Claiborne ever telling him that.

It was from that experience that Judge Claiborne has to defend against Count VII and has to bring forward to you his explanation and the proofs as to what took place concerning that $75,000.

The $75,000, and this is a difficult concept for jurors to understand who aren't used to figures of that magnitude, but you have to remember as Mr. Hendricks told you, when the Judge was in private practice he was making large sums of money and to him $75,000, $100,000 was not an earth-shaking amount of money. A significant amount of money, but not an amount of money that would make his mind boggle.

Judge Claiborne, in 1972, received $100,000, the evidence will show as a gift, not as a loan, as a gift from Sid Wyman, who the evidence will show, was a big gambler who resided at the Dunes Hotel. He had a suite there. The evidence will show he could win or lose a half a million dollars, $500,000 on any given night. The evidence will show he was generous to a fault. He gave Harry Claiborne in Christmas of 1972 $100,000 because he was indebted as a matter of friendship and loyalty to Judge Claiborne, who then was Attorney Claiborne for the Judge's having represented a friend of his in a trial here in Reno concerning the Dunes' case where there were certain allegations of skimming activity or tax evasion or something of that nature, which took place right here where Wyman was a co-defendant and Wyman took the position that without Judge Claiborne being active in the case and doing what Judge Claiborne did best at the time and that was defending people as hard and as tough as he could, that he was unpaid, that he was uncompensated, that he was unappreciated, and Sid Wyman gave him a gift in the amount of $100,000, and Judge Claiborne was told at the time that he got that gift that he should use it for his own personal purposes, that he should not use it for business, that he should use it to enjoy himself because Sid Wyman knew that Judge Claiborne, as a lawyer, gave his very all to his clients at his own personal sacrifice, and he wanted this to be money for Judge Claiborne, so Judge Claiborne could keep it and spend it for his own personal well-being and his own personal pleasure and Judge Claiborne took that money and he didn't put it under a Christmas tree. He took it down to the Horseshoe and he gave it to Teddy Binion, who's one of the owners at the Horseshoe, and he said, "Teddy, could you keep this for me in your box."

Over the years, Judge Claiborne removed $10,000 at a time and another $10,000, leaving $80,000 in the box at about the time that Jay Wright told him that he should pay off his tax liability, and it was at that time that Judge Claiborne went over to the Horseshoe and he removed $80,000 and he put $75,000 into the bank which will be reflected on a deposit slip, not made up by Judge Claiborne, in an effort to hide the transaction, not deposited in $9,000 increments to hide the transaction, but a deposit slip which was made by Ginny McElwain reflecting $75,000 and he took $5,000 which was left over of the $80,000 which remained and he put it in his pocket and he walked around with it the same way he would walk around with the money of the checks which he cashed at the various casinos.

That's no violation of the law.

THE COURT: Mr. Goodman, I don't intend to stop you, but you have used up your 40 minutes.

MR. GOODMAN: Fine. I will be just a little bit longer, your Honor.

Thank you, your Honor.

That's no violation of the law, perhaps he had unorthodox habits, but what takes place is that he pays off his tax liability, during this period of time he's cashing the checks, but he's making his sheets and he's putting them in the envelope and he's recording it on his personal diary and he's making full disclosure to his tax preparers. That is not against the law.

Once again, if you want to think that perhaps it's unorthodox for somebody to keep $100,000 in a box where he is not drawing any interest, you have to think of a man who has the experience that Judge Claiborne did at that point in time as of 1978, he had plenty of money. He had plenty of assets. He was used to it. As a matter of fact, the evidence is going to show that he had a $50,000 cashier's check that he bought, which is not earning any interest either and he put that in his drawer and it sat there for a year without drawing any interest, and then one day by happenstance, because he is more concerned with doing his job as a lawyer and a judge, by happenstance he comes across this cashier's check and he says, "My goodness," and he buys a time certificate of deposit from which he is going to be able to draw interest and make money. But that is not a crime.

He is charged with intentionally and willfully making false statements. I submit to you, ladies and gentlemen of the jury, that even though Judge Claiborne's activities may not have been the way you or I would conduct our affairs, that they may have been unorthodox, they were honest. His conduct was not criminal. He is a good man. You all took an oath --

THE COURT: Don't argue the case.

MR. GOODMAN: Fine.

I ask you just to consider, ladies and gentlemen, just to consider what you hear in the courtroom during the next several days from the witness stand, from the exhibits, from his Honor's instructions. That's all that should concern you about this case.

Listen carefully. Listen carefully. I submit that at the conclusion of all the evidence, we, on behalf of Judge Claiborne, will be able to stand up and look you right in the eye without any hesitation and ask you to return a verdict of not guilty on all three counts. And I thank you very much.

THE COURT: Ladies and gentlemen of the jury, the opening statements of the attorneys are for your information only. They do not constitute evidence, thus there has at this time been no evidence presented at all, even though the lawyers have freely told you what they expect the evidence to be.

The purpose of the opening statement is to enable you to focus your attention on the evidence as it comes in, to try to assist you. But it is not evidence, so you have heard no evidence.

In the meantime, we will take a midmorning break and then we will resume with testimony.

All right. You may go with the marshal.

We will resume, ladies and gentlemen, at 11:20 by that clock up there. Strangely enough, it is a Government clock and it is reasonably accurate.

(Whereupon a recess was held.)

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, SUZANNE KUES ROWE, Certified Shorthand Reporter Number 127, do hereby certify that I was present on the 2nd day of August, 1984, at the hour of 9:30 a.m. thereof, in the United States District Court, District of Nevada, Reno, Nevada, and reported the proceedings in the within-entitled cause in stenotype notes, which were thereafter transcribed by me;

That the foregoing transcript, consisting of pages 1 through 43, contains a full, true and complete transcription of my said stenotype notes, and is a full, true and correct record of said proceedings had at said time and place.

Dated at Carson City, Nevada, this 29th day of November, 1984.

Suzanne Kues Rowe

SUZANNE KUES ROWE, CSR #127

ORIGINAL

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. HARRY E. CLAIBORNE, Defendant.	Case No. Reno, Nevada August 2, 1984 9:30 o'clock, a.m.

VOLUME I
TRANSCRIPT OF TRIAL
Before HONORABLE WALTER E. HOFFMAN, and a jury.

APPEARANCES:

For the Government:	STEVEN A. SHAW, ESQ. WILLIAM C. HENDRICKS, III, ESQ. JAN N. LITTLE, ESQ.
For the Defendant:	OSCAR B. GOODMAN, ESQ. WILLIAM J. RAGGIO, ESQ. J. RICHARD JOHNSTON, ESQ.

CERTIFIED TO BE A TRUE COPY
CAROL C. FITZGERALD, Clerk
United States District Court
By Marie Biddle
Deputy Clerk

REPORTED BY: SUZANNE KUES ROWE
CSR NO. 127

RENO, NEVADA, THURSDAY, AUGUST 2, 1984, P.M.

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(The following proceedings were held in open court before the jury.)

(The witness was duly sworn.)

PATRICIA HARTEY, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. HENDRICKS:

Q Ma'am, if you could tell us your full name, please.

A Patricia Hartey.

Q Where do you live?

A Ogden, Utah.

Q Could you tell us your occupation?

A I am working for the Internal Revenue Service at the Ogden Service Center in Ogden Utah.

Q How long have you worked for the IRS in Ogden?

A Eighteen years.

Q Now, what is your title?

A I am a management assistant at the Ogden Service Center.

Q And your duties and responsibilities as a management assistant?

A I review various programs. I also am designated witness for the service center as custodian of records.

Q Now, during the course of your employment by the IRS, have you become familiar with the practice used by the service in receiving and maintaining tax returns and other tax-related documents?

A Yes, I have.

Q Let me show you, if I might approach the witness, your Honor, a document which has been marked as Government's Exhibit No. 1 and ask you it you can tell us what that document is?

A It is a form 1040 for the year 1977.

Q For whom?

A For Harry E. Claiborne.

Q And can you tell where it was filed?

A It was filed at the Ogden Service Center in Ogden, Utah.

Q And can you, or do you know whether that document has been maintained thereafter in the normal course of business by the IRS in Ogden?

A Yes, it has.

Q All right. Let me show you Government's Exhibit No. 2, marked for identification. And ask you if you would please review that document to the extent that you need to and tell us what it is.

A Exhibit 2 is a form 1040 income tax return for the year 1978 for Harry E. Claiborne.

Q And where was it filed?

A It was filed at the Las Vegas District Office.

Q All right. Now, do you know whether that document has been maintained by the IRS in the normal course of its operation since the date it was filed?

A Yes, it has.

Q All right.

THE COURT: I take it that Ogden, Utah, is the designated place for taxpayers to file their federal returns for those people who live in Nevada?

THE WITNESS: Yes, it is.

THE COURT: Now, do they have an option to file it in a District Office?

THE WITNESS: Yes, they do, and then they are sent to the Ogden Service Center.

BY MR. HENDRICKS:

Q Was the practice that you have just described to Judge Hoffman the practice you employed on that exhibit?

A Yes, it was.

Q Let me show you Government's Exhibit 3, marked for identification. Let me ask you if you would please review it and tell the ladies and gentlemen of the jury and his Honor what that document is?

A It is a form 1040 income tax return for the year 1979 for Harry E. Claiborne.

Q And where was it filed?

A It was filed at the Ogden Service Center.

Q And do you know whether it has been maintained there in the normal course of business of the IRS?

A Yes, it has.

Q And of course it is the normal course of business of the IRS to receive and maintain 1040s?

A Yes.

MR. HENDRICKS: At this time, your Honor, we would move into evidence Government's Exhibit 3.

THE COURT: Any objection to Government's Exhibit 3? Of course, technically I suppose this lady is not familiar with the signature of Harry E. Claiborne.

MR. JOHNSTON: No, there is no objection, your Honor. May I ask just one question on voir dire?

THE COURT: Well, no -- well, what's the purpose of voir dire at this stage on this point?

MR. JOHNSTON: I will cover it in cross-examination.

THE COURT: Let it be admitted as Government's Exhibit 3, which is the tax return of Judge Claiborne for the calendar year 1979.

(Whereupon Government's Exhibit 3 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Miss Hartey, when was this 1040 filed?

A June 17th, 1980.

Q And whose signature appears as taxpayer?

A Harry E. Claiborne.

Q Ma'am, what was the total legal fee income reported on that tax return?

A $22,332.87.

Q And can you tell what the total income on Line 22 of that return is from all sources?

A From all sources? One Line 22, the total income was $80,227.04.

Q Now, Miss Hartey, let me show you what's been marked for identification as Government's Exhibit No. 4. Can you tell us what that is?

A Exhibit 4 is a form 4868 which is an application for an automatic extension of time to file an individual income tax return for the year 1980.

Q And where was it filed?

A It was filed at the Ogden Service Center.

Q All right. And is this the kind of document which the IRS receives and maintains in the normal course of its operations?

A Yes, it is.

Q And who was the taxpayer?

A Harry E. Claiborne.

MR. HENDRICKS: All right. At this time, your

Honor, I would move the admission of Government's Exhibit 4.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 4 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Can you make out the name of the, the signature block there?

A Yes. Harry Claiborne.

Q Can you tell us who prepared it?

A Harry Claiborne.

Q How can you tell that?

A It is -- this -- there is only one signature on it. If someone else had prepared it for him, it would have to be signed at the bottom part of the form.

Q Now, ma'am, let me ask you whether there is a figure on Government's Exhibit 4 which constitutes a taxpayer's estimated tax liability for that year?

A Yes, there is.

Q And is that year 1980?

A For the year 1980, yes.

Q What is the estimated tax liability?

A $42,847.96.

Q Now, does Government's Exhibit 4 reflect any amount that may have been paid with this application for extension?

A Yes, it does.

Q How much was that?

A $20,817.59.

Q And does Government's Exhibit 4 indicate any amount paid with the declaration of estimated tax for 1980?

A Yes, it does.

Q How much is that?

A $4,192.41 as estimated tax payments.

Q Now, let me show you what's been marked as Government's Exhibit No. 5.

A Exhibit 5 is a form 1040 income tax return for the year 1980 for Harry E. Claiborne.

Q And can you tell us where it was filed?

A It was filed at the Ogden Service Center.

Q Since that time has it been maintained in the normal course of the operation of the service center in Ogden?

A Yes, it has.

MR. HENDRICKS: Move the admission at this time, your Honor, of Government's Exhibit 5.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 5 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Can you tell what the total legal fees were that were reported for the year 1980 on Government's Exhibit 5?

A There is none.

Q There is none.

What was the total income from all sources reported on Harry E. Claiborne's tax return for 1980 on Line 22?

A The total income for 1980 is $54,251.

Q Now, can you tell from looking at Government's Exhibit 5 whether the taxpayer, Harry E. Claiborne, had a tax liability for 1980, according to the return?

A Yes, he did.

Q What was that figure?

A $1,103.

Q And how does that figure compare with his own estimate of a few months before as reflected on Government's Exhibit 4?

A On Government's Exhibit 4, he had estimated $42,847.96.

MR. HENDRICKS: That's all I have. Thank you very much.

THE COURT: Cross-examine.

MR. JOHNSTON: Yes, your Honor. Thank you.

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CROSS-EXAMINATION

BY MR. JOHNSTON:

Q Ms Hartey, would you look, please, at the 1979 return which has been marked and received in evidence as Government's Exhibit No. 3 and tell me whether that exhibit actually includes a document or documents in addition to the return itself?

A There are other documents attached other than the form 1040.

Q Yes. Would you tell us, please, what those are?

A There are Schedule A and B itemized deductions and interest income.

Q I am sorry. What I mean is in addition to any schedules that are properly part of the return itself. Do you not find, is there not included in that exhibit an application for an extension of time to file the return?

A There is an application to file for 1979 attached.

Q That's not part of the 1040, is it?

A Well, a lot of times it will come in with the 1040. It is common.

Q Does that application indicate any amount of tax that was paid with the application?

A On this it does not.

Q It shows a balance of tax due, does it not?

A Yes, it does.

Q And what is that amount?

A $8,000.

Q Are you able to tell from that file that you have before you whether that amount was paid with the filing of the application?

A Well, it shows that he owed it and then he claims it on his form 1040 as amount paid with form 4858, but I could not tell you if we received that money because the extension of time to file here was the taxpayer's copy that he retained. And it doesn't reflect that the $8,000 was paid. He did claim it on his form 1040.

Q Is there anything on the application for extension anyplace where he should indicate if he is sending the money in with the application?

A Well, on the line in the application where it says "Balance due," it says "Pay in full with this form."

Q And the amount shown there is $8,000?

A That is correct.

Q You have no reason to believe that the $8,000 was not sent in with the application, do you?

A Well, I can't tell you one way or the other if it was just from this information attached to this document.

Q But the return itself takes credit for the payment, does it not?

A He has claimed it, yes.

Q So as far as you can tell from the records that you have before you, the $8,000 was paid, was it not?

A From the information that's on the return he says he paid it.

Q Yes. Now, would you direct your attention, please, to the application for an automatic extension of time to file the 1980 return, which has been marked now as Government's Exhibit 4, I believe. Your testimony I think was that that was prepared by Harry Claiborne; is that right?

A Yes, it has his signature on there.

Q How can you tell who prepared the application?

A Sir, usually it requests that if prepared by someone other than the taxpayer that they must sign it under penalties of perjury. There is no signature under that request. So you would say that Harry Claiborne had prepared this request.

Q You had no knowledge or information about who prepared the request except what you read on the form; is that correct?

A That is correct, sir.

Q You don't have any other source of information about where this was typed or who prepared it?

A No.

Q So your testimony that it was prepared by Judge Claiborne is based simply on the fact that you see his signature there with a date and no one else has signed as a preparer; is that a fair statement?

A That is correct.

Q Thank you. Now, with respect to the 1980 return, which is in evidence as Government's Exhibit 5 at this point, is that return typewritten or handwritten?

A That return is handwritten.

Q You have no knowledge as to whose handwriting that is, do you?

A No, I do not.

Q As a matter of fact, there may be more than one handwriting on the return; is that a fair statement?

A That is a fair statement.

Q Would you direct your attention to Schedule D in that return, please?

A (Complies.)

Q Would you read to the jury, please, if you can make it out, the notation that appears in the upper left-hand part there under Item 1.

A "Accounts receivable for law practice left upon letter of confirmation to Judicial U.S. Court appointment, 1978."

Q And then do you see some lines that are drawn from that down to Part 2?

A Yes, I do.

Q Would you read to us what's written at the end of those lines in Part 2?

A Type here.

Q Does it appear to you that this was originally intended to be typed? Is it a typed return?

MR. HENDRICKS: I object, your Honor. She has no way of knowing what the intention was of the people who prepared this document.

THE COURT: Sustained.

MR. JOHNSTON: All right.

BY MR. JOHNSTON:

Q You testified, Ms Hartey, that there was no income from fees reflected in this return; is that correct?

A That is what he asked me if there was.

Q Yes, and your answer was you looked through the return and you didn't find anything that was labled income from fees and your answer was I think that there is no fee income reflected in the return?

A That's correct.

Q As a matter of fact, you don't know what may be reflected in the figures that appear on Schedule D, do you?

A No, I do not.

Q You don't have any information as to how that schedule was prepared or what numbers were involved in its preparation?

A No, I do not.

Q You have no way of knowing whether the person who prepared the return took into account fees that were received from legal practice, do you?

A No, I do not.

MR. JOHNSTON: May I have just a moment, your Honor.

BY MR. JOHNSTON:

Q The return is handwritten, you have testified. Is it written in pen or pencil, Ms Hartey?

A The return is -- most of it is written in pencil.

Q And is Schedule D written in pencil?

A Yes, it is.

MR. JOHNSTON: Thank you very much.

THE COURT: Anything else of this lady?

MR. HENDRICKS: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. HENDRICKS:

Q Miss Hartey, first with respect to Government's Exhibit 5, would you address your attention to the signature page, the second page of the 1040.

A (Complies.)

Q What stamp appears there as being connected with the preparer of that return?

A Creative Tax Planning, Lamb Watson Consulting.

Q And your testimony is that there were no legal fees reported in that return?

A That's correct.

Q Where should they have been reported?

A On a Schedule C.

Q Is there a Schedule C?

A No, there is not.

Q With respect to Government's Exhibit 4, the previous year, 1979, excuse me, Government's Exhibit 3, is there a Schedule C for that year?

A Yes, there is.

Q Which does report legal fee income?

A Yes, it does.

MR. HENDRICKS: Thank you.

MR. JOHNSTON: I have no further questions of this witness.

THE COURT: May this witness be excused, gentlemen, because she is going back to Ogden, I suppose. I don't want to have her recalled.

MR. JOHNSTON: That's agreeable, your Honor.

THE COURT: All right. Thank you very much, Miss Hartey.

(Whereupon the witness was excused.)

THE COURT: Who is our next witness?

MR. SHAW: James Brown, your Honor.

(Whereupon the witness was duly sworn.)

JAMES J. BROWN, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Brown, would you give us your full name, please?

A James J. Brown. James Joseph Brown.

Q Would you give us your business address?

A It's 830 East Charleston Boulevard, Las Vegas, Nevada.

Q How are you employed?

A I'm self-employed as an attorney.

Q How long have you been an attorney, Mr. Brown?

A Since 1968.

Q And what was your first job after you became an attorney?

A I, upon passing the bar, I immediately commenced practicing law with Judge Claiborne.

THE COURT: He was then, of course, an attorney?

THE WITNESS: Who was then Harry E. Claiborne.

BY MR. SHAW:

Q That was in 1968?

A Yes, sir.

Q You were working for him as a law clerk off and on; is that correct?

A That's correct. For approximately three, three and a half years before that I worked for him during the summers and the holiday periods.

Q Now, did you work continuously for him from 1968 up until the time that Mr. Claiborne became Judge Claiborne?

A Yes, sir.

Q Do you recall the date that he became a judge?

A September 1st, 1978.

Q Now, as of September 1st, 1978, who were the employees that were working for Mr. Claiborne, that is, as of the date before he became a judge?

A It was myself; there was Annette Quintana, and Judge Harry Claiborne. We were the three attorneys. There was at that time secretary Ginny McElwain and a secretary Rene Labas.

Q Is that the full list of the employees as of the last day?

A Yes, except for a runner and I don't recall who the runner was. I think it was probably my son, but I am not certain at the time.

Q As of September 1st, 1978, where did you go, if anywhere?

A I commenced practicing as a sole practitioner. Immediately after he assumed the bench I was in practice as a sole practitioner.

Q Did either of the secretaries go with Mr. Claiborne to the courthouse when he became a judge?

A No.

Q Do you know where Annette Quintana went?

A I don't know at what point in time, but I think the first firm -- I think she immediately went with Oscar Goodman. I don't know if there was a lapse of a week or a month or whatever, but I think she shortly, when she went back to work it was with Oscar Goodman.

Q Now, I take it as of the last day of the practice before it broke up there were some cases that were still pending, I don't imagine you could have closed up all of the cases?

A No, that's correct.

Q Do you know what happened to the cases that were still pending as of the date Mr. Claiborne became a judge?

A The majority, if not all, of the cases in the state court system went with me.

Q What types of cases generally were they?

A Those would have been personal injury lawsuits, some divorce, custody, some criminal cases, some estates, probates of wills. Those are primarily the types of cases.

Q Now, as of that category of state cases that you have just described, who was doing the primary amount of work on those cases before Judge Claiborne became a judge?

MR. GOODMAN: Objected to as being irrelevant, your Honor.

THE COURT: I will permit it.

THE WITNESS: With respect to the civil cases that was in the state court system, I would say as I recall I was doing probably 90, 95 percent of those cases. As far as the criminal cases that were in the state court system, the larger trials he would handle, I would handle most of the preliminary hearings and many of the other trials. So I would, you know, as I recall I handled the majority of the state court appearances as well.

BY MR. SHAW:

Q What happened to the cases that were related to the federal court system if you know?

A The federal court cases which included both appeals and trial work, he and/or Annette handled those. I made very few if any appearances in the federal court.

Q What happened to those cases after Mr. Claiborne became Judge Claiborne?

A I don't know what cases there were in existence. I mean if there were cases I didn't take care of them and I can't tell you that in fact there were cases. I just didn't have anything to do with the federal cases.

Q Did you reach an agreement with Mr. Claiborne before he took the bench regarding the disposition of the pending state court cases?

A Yes, we did.

Q Could you tell us approximately when that agreement was reached between the two of you?

A It would have been within the last couple of weeks prior to his being sworn in and that's the best I can do. I can't tell you if it was the day before or two days before, but it was in that last two-week period of time.

Q Where did those discussions take place?

A They would have taken place at our then office on South Third Street in Las Vegas.

Q Was anyone else present during those discussions?

A No.

Q What was the agreement that was reached between the two of you?

A The agreement was with respect to personal injury cases, he would receive a third of what our fee was, what I received which was normally a third of the total amount of the recovery. We had them on a contingent fee basis. On estate cases, that too was approximately a third, as I recall it was a third of what the fee was.

On cases where all of the work had been completed and it was just merely a matter of collection, we were just waiting for the fee to come in, I would receive 25 percent and he would receive 75 percent. But there weren't very many of those.

On criminal cases, I don't think that there was -- most criminal cases were either, they had either paid or if I was going to do the work, I would receive the money. I don't think we had any kind of a fee arrangement on criminal cases.

Q With regard to his criminal cases, the client had paid in advance?

A Yeah. That's the normal -- I mean you try to get the fee before you ever end up going into court on a criminal case. It doesn't always work out that way, but --

Q Other than the collection cases that you have described, all of the other cases that were part of this agreement you had with Mr. Claiborne required you to do some work to finish the case up; is that correct?

A Correct.

Q Now, did there come a time after Mr. Claiborne became a judge that some fees did come in on the cases that were related to this agreement?

A Yes. I did collect fees on various cases.

Q And would you routinely send to Judge Claiborne his share of those fees?

A Yes, I do.

Q And did that type of process occur during the year of 1979?

A Yes, it did.

Q I would show you what has been marked as Government's Exhibit No. 6 which is an exhibit which appears to have four checks on the left side and five checks on the right side.

Generally, could you tell us what these nine checks represent?

A Commencing in -- well, generally what they represent are checks written upon my trust account for the portion of the fee that was due to Harry Claiborne pursuant to our agreement.

Q And these checks are all dated during the year 1979; is that correct?

A Yes.

Q Now, beginning in the upper left-hand corner, can you give us the date and the amount of that check?

A The check is dated January the 5th, 1979, and it's in the sum of $3,381.10.

Q Do you recognize the signature of the maker of that check?

A Correct. That's my signature.

Q And who is it written to?

A Harry E. Claiborne.

Q All of these checks have your preprinted name on the top of them; is that correct?

A That's correct.

Q And are all of these checks signed by you?

A That's correct.

Q And all of these checks were written pursuant to the 1979 fee agreement that you have just described, were they not?

A That's correct.

MR. SHAW: We would move the admission of Government's No. 6, your Honor.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 6 was duly admitted into evidence.)

BY MR. SHAW:

Q Could you identify for us the second check on the left side of Government's Exhibit 6?

A It's a check dated January the 19th, 1979, in the sum of $17,500.

Q Are you able to tell or identify the signature on the back of that check?

A The signature appears to be similar to Harry Claiborne's signature.

Q How about the check above that that you described a moment ago as being a $3,381.10 check. Do you recognize the signature of the endorsement on the back of that check?

A That signature appears similar to Harry Claiborne's signature.

Q Now, the third check on the left side --

MR. GOODMAN: Excuse me, your Honor. We would offer to stipulate that these checks were written by Mr. Brown and received by Judge Claiborne.

THE COURT: I will have to let the evidence go in. There were suggested stipulations previously, but I haven't seen any of them. No one has proved them, so let the evidence come in.

BY MR. SHAW:

Q What is the amount of the third check?

A $833.33.

Q Now, all of these checks have an indication, do they not, in the lower left-hand corner indicating what the check is written for; is that right?

A That's correct. Reference to the case.

THE COURT: What was the date of the $833?

THE WITNESS: January 26th, 1979.

THE COURT: All right.

BY MR. SHAW:

Q Let's use that check as an example, Mr. Brown. Could you tell us what the notation on the lower left-hand corner indicates?

A What I have handwritten in is one-third of one-third of Smalley vs. Cactus Pete's. Smalley vs. Cactus Pete's was a personal injury case, a wrongful death case and $833.33 represents one-third of the total fee received. So if you take three times that amount, that's what I took in as a fee on that case.

Q So you took a third of the total recovery and then passed a third of that third to Mr. Claiborne?

A Yes, sir.

Q What is the date and amount of the check in the lower left-hand corner of Exhibit 6?

A Pardon me?

Q The date and the amount of the check in the lower left-hand corner of Exhibit 6?

A The date and the amount; I don't understand. The next check, is that what you want?

Q Yes. What is the date and dollar amount of that check?

A Okay. January 26, 1979, $84.38.

Q Now, directing your attention to the check in the upper right-hand corner of Exhibit No. 6, could you give us the date of that check and the dollar amount that was sent to Mr. Claiborne?

A February 15th, 1979, $1,106.66.

Q And would you give the same information regarding the check directly below that?

A July the 19th, 1979, $7,000.

Q And the next check below that?

A August the 31st, 1979, $2,905.90.

Q And the next check?

A November the 13th, 1979, $3,011.56.

Q And the final check in the lower right-hand corner of the exhibit?

A November 13, 1979, $250.

Q Now, how were these nine checks, if you know, delivered to Mr. Claiborne or, that is, Judge Claiborne?

A They would have been placed in an envelope and mailed to him.

Q At what location?

A At the Federal Building in Las Vegas.

Q They would have been, each of them would have been mailed at or about the time that the check was dated?

A That's correct.

Q Now, did you continue during the calendar year 1980 to send a share of the fees that you had received to Mr. -- to Judge Claiborne?

A Yes. I don't have a specific recollection, but if you had the check, I did.

Q I will show you what has been marked as Government's

Exhibit No. 7, which appears to have two checks. Were those two checks also written on your trust account?

A That's correct.

Q Were they both written during the calendar year 1980?

A That's correct.

Q Were they both written pursuant to the 1979 fee agreement that you have described for us earlier?

A That is correct.

MR. SHAW: We would move the admission of Exhibit No. 7, your Honor.

MR. GOODMAN: No objection.

THE COURT: That will be admitted.

(Whereupon Government's Exhibit 7 was duly admitted into evidence.)

BY MR. SHAW:

Q Did you sign both of those checks?

A Yes, I did.

Q Would you give us the date that the first check was written and the dollar amount of that check that was sent to Judge Claiborne?

A August the 6th, 1980, and in the sum of $888.30.

Q Does that appear to be Judge Claiborne's signature on the endorsement side of that check?

A Yes, that is a signature that is similar to his signature.

Q And the second check listed in Exhibit No. 7, could you tell us the date of that check and the dollar amount?

A November the 7th, 1980, in the sum of $7,071.19.

Q And are you able to say whether or not that is Judge Claiborne's endorsement on the back of that exhibit?

A The signature appears similar to his signature.

Q And were these two checks that were sent to Judge Claiborne in 1980 also sent to Judge Claiborne at his chambers in the federal courthouse in Las Vegas?

A I don't recall specifically sending him these particular checks, but as I recall I mailed all of the checks to his chambers in Las Vegas.

Q And by "all of the checks" you mean every check that was ever sent to him pursuant to the 1978 fee agreement?

A That's correct.

Q Do you have any memory of any checks either being mailed to him at any other location or being delivered to him in any other location?

A I don't have any memory of that, no.

Q Did he ever pick up any of the checks from you at your office?

A Not that I recall, no.

MR. SHAW: That would be all I would have. Thank you, sir.

THE COURT: Cross-examine?

MR. GOODMAN: Thank you.

CROSS-EXAMINATION

BY MR. GOODMAN:

Q Mr. Brown, when you were in law school during the summer you would clerk for Judge Claiborne, would you not?

A That's correct.

Q When did that relationship begin where you began to work in his employ?

A Either in 1964 or 1965.

Q And you were licensed in what year?

A 1968.

Q So between '64 or '65 and '68, you were working as a clerk for him; is that correct?

A That's correct.

Q Then you had an agreement with him, did you not, that when you got out of law school and passed the bar exam you would go to work for him as an associate, isn't that right?

A That's correct.

Q And he kept that agreement with you, didn't he?

A That's correct.

Q And you worked with him from the time that you passed the bar exam up until such time as he went on the federal bench?

A That's correct.

Q Could you describe basically the type of practice that Judge Claiborne had during the period of time where you were employed by him?

A The -- it was a general practice where we did trial work. It was 90 percent trial work. The emphasis, his primary representation was in the area of criminal law. He had a reknowned reputation as a criminal defense attorney, so we had a lot of criminal cases, and as collateral we had divorces, personal injury cases, estates. He had been there for a long time and everybody in town knew him or knew of him, so we just had a lot of different other types of cases as well.

Q And would it be fair to characterize his practice and your involvement in his practice as an active practice of law?

A Very much so.

Q And you indicated that there was another lawyer who was associated with you and Judge Claiborne by the name of Annette Quintana; is that correct?

A That's correct.

Q What was her function or role in Judge Claiborne's law office?

A She did primarily the legal research briefs, appellate court, there was a lot of appellate work that related to criminal law and she would do most of the brief writing in the appellate aspect of it and in other cases she would prepare pleadings and motions for criminal cases and some civil cases.

Q As to the day-to-day practice, was there much client contact between you and Judge Claiborne's clients?

A Ask me that again.

Q All right. In the day-to-day operation of Judge Claiborne's office, did the clients come into contact with you?

A Yes.

Q Did the clients usually come into contact with Annette Quintana, if you know?

A To a much, much lesser extent.

Q And you went to court with the clients; isn't that correct?

A That's correct.

Q And Judge Claiborne went to court with the clients?

A That's correct.

Q And Judge Claiborne tried the larger cases in the office, didn't he?

A That's correct. Now, when I say that I handled 95 percent, I mean I am only talking about that last year. I mean prior to that time, you know, during the ten year period of time, I don't mean to infer that I handled 90 percent of all the state and civil cases during the ten years that I was with him. That's not necessarily the case.

Q But there did come a time in 1978 when you became aware of the fact that Judge Claiborne was nominated by Jimmy Carter for Federal Judgeship?

A That's correct.

Q When do you recall, did you become aware of the fact that the nomination took place?

A The only thing that I can remember, it seems like the investigation of him for approval as a federal judge went on for approximately a year. I may be off two, three four months, I don't know.

Q When you say "investigation", are you talking about the Federal Bureau of Investigation's investigation of Judge Claiborne?

A That's correct.

Q In order to ascertain whether or not --

THE COURT: Wait a minute. You say that's the only thing that investigated him?

THE WITNESS: Well, I don't know who it was that was doing the investigation. I know that there was an investigation going on after his nomination and prior to his being, his name being submitted for approval. Now, I don't know who was doing it.

THE COURT: All right.

THE WITNESS: I did have personal contact with the FBI.

THE COURT: The FBI did come to you?

THE WITNESS: Who spoke to me.

THE COURT: All right. ABA, American Bar Association?

THE WITNESS: No, I don't recall ever talking to them.

BY MR. GOODMAN:

Q There came a time that you had and Judge Claiborne had discussion about what would happen to his practice when he took the federal bench, didn't he?

A That's correct.

Q When did you first engage in such discussions with him?

A The best that I can remember was -- it was during the two weeks or so prior to his going onto the bench.

Q So it would be two weeks prior to around September the 1st of 1978?

A Yes.

Q And during that period of time, would it be fair to describe the state of his office as being a hectic state of affairs?

A It was very hectic and very disorganized.

Q There were books all over the place and files all over the place and arrangements were being made to dispose of his practice, weren't there?

A It was -- yeah. There were books, files, I mean it was pandamonium, really.

Q And at this period of time, two weeks before he went on the bench, you and he agreed to a division of fees which would be received by you once he became a federal judge, correct?

A That's correct.

Q And as far as you were concerned, this was a gentleman's agreement, was it not?

A That is correct. There was -- it was never reduced to writing.

Q It was basically on a handshake; wasn't it?

A That's correct.

Q And the checks which you were asked about and which are in evidence which are reflected as Government's Exhibit 6 and Government's Exhibit 7, they are reflective of your sending to Judge Claiborne the monies that you believed you owed him pursuant to this handshake agreement, correct?

A That's right.

Q Was there any argument or disagreement at any time about this between you and Judge Claiborne?

A Never.

Q So both parties as far as you are concerned did what you were supposed to do?

A That's correct.

Q All right. Now, some of the checks or many of the checks were cashed at the Horseshoe Hotel. Were you able to see that on the back of the checks where Judge Claiborne's endorsement appears?

A Yes. Several of them show that.

Q Okay. And Judge Claiborne's name, Harry E. Claiborne, appears above the endorsement or near the endorsement, does it not?

A That's correct.

Q And also on the front of the checks on each and every one of them the check is made out to Harry E. Claiborne, are they not?

A That's correct.

Q And they are specifically described as to the particular account to which the monies which are being sent to Judge Claiborne came from, are they not?

A That's correct.

Q All right. Where is the Horseshoe Hotel in regard to the federal courthouse?

A Approximately two, two and a half blocks away.

Q All right. And what is the Horseshoe Hotel and Casino?

A The Horseshoe Hotel and Casino is a casino downtown that Judge Claiborne would have lunch at or coffee daily for almost the entire period of time that I ever knew him.

Q And when Judge Claiborne, did you ever go to the Horseshoe Hotel with Judge Claiborne?

A Yes.

Q When he went there, would he sit with anybody in particular?

A He would normally sit with, if Benny Binion was in town, he would sit with Benny Binion.

Q Who was Benny Binion?

A Benny Binion owned -- well, he is the patriarch, his family owns the Horseshoe Hotel and Casino.

Q How would you describe, if you are able to, the relationship between Benny Binion and Judge Claiborne?

MR. SHAW: Objection.

MR. GOODMAN: Your Honor, may I take it as though it is on direct examination? I think it's important because of the facts.

THE COURT: You are certainly bringing out new material, there is no question about that. All of this including the cashing of the checks is new material.

I will permit you to go into that on direct examination. I think the relevancy, there is some relevancy. What is the objection, Mr. Shaw, to the relevancy assuming that this is new material that I will permit Mr. Goodman to go into?

MR. SHAW: The objection was not to relevancy, it was to whether he wanted to open a direct testimony and not use leading questions.

THE COURT: Well, of course, ladies and gentlemen of the jury, may I say to you that when a witness is put on the witness stand and asked questions, generally speaking the cross-examination of that witness should be limited to what was brought out by the direct examination by the lawyer who put the witness on the stand. But on the other hand, that means that we would have to recall Mr. Brown and bring him back here from Las Vegas when the defendant goes forward with his case, and that's a foolish waste of time to Mr. Brown. I don't know whether he wants to come here or not. I doubt that he does.

In any event, I then let Mr. Goodman bring this out on what is now direct examination, that is Mr. Brown is in effect his witness at this time, and he will be cross-examined on these various few items by the Government. But now it is nine minutes past twelve, and you, ladies and gentlemen, have to be taken down to a hotel and fed lunch and I have told the marshal while the luncheon hour is from 12:15 to 1:30, I realize that you may have difficulty in getting prompt service. I don't want you to bolt your meal to such an extent that you come up with a bad case of indigestion, so you won't be penalized if you are late at 1:30. Maybe Mr. Shaw and Mr. Goodman, they might be penalized, but you are protected. You may be excused for luncheon recess at this time until 1:30 as far as counsel are concerned.

(Whereupon the jury was excused and the following proceedings were held in open court out of the presence of the jury.)

THE COURT: Now that Mr. Goodman has more or less taken you on as his witness, I know it will be impossible to finish. You may be excused until 1:30, Mr. Brown.

Anything further, gentlemen, before we recess for lunch?

MR. GOODMAN: No, your Honor.

(Whereupon the luncheon recess was had.)

THE COURT: The marshal advises that all jurors are present and I take it we are ready to bring them in. Mr. Brown was on the witness stand.

Let the jury come in, Mr. Marshal.

(Whereupon the following proceedings were held in open court before the jury.)

THE COURT: All jurors are present.

All right, Mr. Goodman, I believe you were asking some question on, in a direct examination.

MR. GOODMAN: Yes, your Honor. Thank you, your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. GOODMAN:

Q Mr. Brown, before we broke for the noon recess, I was asking you a question whether or not you were able to tell the ladies and gentlemen of the jury what the relationship was, if you know, between Benny Binion and Judge Claiborne?

A It was a very close, personal relationship that spanned probably thirty years.

Q Are you able to tell the ladies and gentlemen of the jury what the relationship was between Teddy Binion and Judge Claiborne?

A Similarly. Close, personal relationship.

Q Do you know a gentleman by the name of Sid Wyman?

A Yes, sir.

Q And who was Sid Wyman?

A Sid Wyman was at one time a client at the office, but for the majority -- I mean, but he was a personal friend of Mr. Claiborne's as well.

Q Are you able to describe the relationship, if you know, between Judge Claiborne and Sid Wyman?

A Close personal friendship.

Q All right. Did Judge Claiborne ever tell you Sid Wyman gave him a hundred thousand dollars?

A Yes, sir.

MR. SHAW: Objection.

THE COURT: The objection is sustained.

MR. GOODMAN: I have no further questions then.

THE COURT: The jury is to disregard the last answer.

REDIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Brown, you testified on what I guess has been the second level of direct testimony, you have had in this case that the Horseshoe Casino is two and a half blocks from the Federal Courthouse.

A Approximately.

Q Is it more approximately four and a half blocks?

A As the --

Q No crows.

A It's on Fourth Street and the Horseshoe is on Second Street.

Q Maybe we can clear this up. Let me show you what has been marked as Government's Exhibit No. 45, and ask you to spend as much time with that as is necessary and tell us whether or not that is a fair and accurate map of the downtown area of Las Vegas.

A Yes. That's a fair, accurate map of Las Vegas.

Q Now, the Federal Courthouse on there is circled in blue, is it not?

A Right here, correct. There's a lot of buildings circled in blue, but the federal courthouse is one of them.

Q Is the Horseshoe Casino also circled in blue?

A That's correct.

Q Are you pointing to the Golden Nugget?

A Oh, is that the Nugget? Oh. I guess it is. Where's Fremont? You are right.

MR. SHAW: Your Honor, I would move the admission of No. 45.

THE COURT: Be admitted.

(Whereupon Government's Exhibit 45 was duly admitted into evidence.)

BY MR. SHAW:

Q I realize the jury can't see this very well, but just from a comparative analysis, could you point again to where the Federal Courthouse is where Judge Claiborne's chambers were?

A Federal Courthouse would be right here.

Q And would you point to the Horseshoe Casino?

A Right here.

Q And would you identify the other buildings that are circled in blue?

A That's the Golden Nugget as you brought to my attention. That's the Pioneer Citizens Bank, First National Bank and this is Valley Bank.

Q So there are at least three banks closer to Judge Claiborne's chambers than is the Horseshoe Casino; is that right?

A Correct. In between the Horseshoe and Federal Building, there are three banks.

MR. SHAW: That's all I have. Thank you.

MR. GOODMAN: Your Honor, may I recross, very briefly?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. GOODMAN:

Q Mr. Brown, the Horseshoe is open 24 hours a day, is it not?

A That's correct.

Q And you testified, did you not, that Judge Claiborne would go over there frequently to have coffee or to have meals or to visit, isn't that correct?

A That's correct.

Q And he did that while he was in practice with you, didn't he?

A That's correct.

Q And that to your knowledge did he do it while he was a judge as well?

A To my knowledge he -- I don't know with what frequency, but I do know that he did go over there with considerable frequency after he was a judge.

Q And when you saw him there, you say he was usually socializing with one of the Binions, be it Teddy or Jack or Benny, correct?

A That's correct.

Q And the banks, of course, in Las Vegas have normal banking hours, don't they?

A Yes.

Q By that I mean they are usually open from, let's say 9:00 to 5:00?

A 9:00 to 5:00 or 9:00 to 4:00, something like that.

MR. SHAW: Nothing further.

THE COURT: May Mr. Brown be excused and return to his home?

MR. GOODMAN: Yes, your Honor.

THE COURT: Thank you, Mr. Brown.

(Whereupon the witness was excused.)

THE COURT: Our next witness?

MR. HENDRICKS: Our next witness is Annette Quintana, your Honor.

(Whereupon the witness was duly sworn.)

ANNETTE QUINTANA, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SHAW:

Q Good afternoon. Can you tell us your whole name, please?

A Annette R. Quintana, Q-u-i-n-t-a-n-a.

Q And your address?

A 901 Eugene Surnon Street, Las Vegas, Nevada.

Q And what is your occupation?

A I am an attorney.

Q And are you employed by Oscar Goodman?

A I am associated with him in a professional corporation.

Q And do you know the defendant in this case, Harry Claiborne?

A Yes, I do.

Q Did you have occasion to be employed by him?

A Yes, I was.

Q And did that employment cover the year 1977 and 1978?

A Yes, it did.

Q Now --

A I beg your pardon. It didn't cover the entire year of 1978. Only until the month of September.

Q Did it cover the period up to the first day of September, 1978?

A Yes, it did.

Q And did there come a time in '78, prior to September 1st when Judge Claiborne became a Federal District Court Judge?

A My recollection is he became a Federal Judge on September the 1st, 1978.

Q Prior to that time, did you have occasion to discuss with him a division of income which was to be derived from pending cases in your law firm?

A Not in such general terms.

There were, I think, one or two matters which were transferred to me as substituted counsel. I don't believe that one of those involved any division of a fee if that's the kind of income you are talking about.

Q Did you have an agreement regarding the matter involving one Jay Sarnow?

A We did. Before Judge Claiborne went on the bench, there was an agreement that I would continue the representation of Mr. Sarnow with respect to a case that was then pending on appeal and some later matters. We didn't have a discussion about fee at that time, however.

Q Now, did you, after Judge Claiborne took the bench, did you have occasion to receive monies in connection with your work on the Sarnow case?

A I did, in connection with my work and work that Judge

Claiborne had earlier done.

Q And what was the figure that you received, total figure?

A $10,000.

Q Now, did you provide any or all of that $10,000 to Judge Claiborne?

A I provided one half of it to Judge Claiborne at his direction.

Q Okay. In one payment or more than one payment?

A It was in five payments.

Q And did that cover a period of five months?

A That's my recollection.

Q Do you recall what year that was in?

A I think it began the early part of 1979.

Q Let me show you what's been marked for identification as Government's Exhibit 8. Five letters. Would you take a look at those, please.

Tell us if you can identify them.

A Two of the letters carry my, you know, these copies carry my signature, Arnette. And the others appear to be. One has my complete signature and they appear to be the transmittal letters that were used.

Q Now, the date of the first is the 16th of January, 1979?

A Yes, it is.

Q And is that signed by you?

A Yes.

Q And that's a true and correct copy of your transmittal letter to the best of your recollection?

A Yes, sir.

Q And similarly, the second one, February 12th, 1979, does that appear to be a true and correct copy of the transmittal letter in which you provided a cashier's check in the amount of $1,000 to Judge Claiborne?

A As far as I know it is. These things occurred many years ago. I couldn't say that I have an exact recollection of every word, but this would be in the time frame and it appears to be the letter.

Q Can you say the same thing with respect to the remaining three letters, one on March 9th, one on April 12th, which is signed Annette and one on May 14th, which is signed Annette?

A Yes. My answer would be the same.

Q Now, did you maintain copies of these documents in your files?

A I did.

Q And these appear to be true and correct copies of documents which you maintain in your files?

A So far as I can see.

Q Do you have any reason to doubt it?

A No.

Q Would it be your normal practice in a matter of this sort to retain this kind of business correspondence?

A I think it probably would be. If I might say something here. I did retain copies of the transmittal letters and I did bring them here with me. They are out in the hall. If you want to see the letters retained.

Q Well, do you have any doubt as to the ones that are marked Government's Exhibit 8?

A No, I don't, but your question suggests to me that you might think there was some difference.

THE COURT: If there is any doubt in your mind, you are at liberty to go get the letters, Ms Quintana.

MR. HENDRICKS: Why don't you step down from the stand with his Honor's permission?

THE WITNESS: If the Court would inquire.

THE COURT: I have never had any of the letters. They don't give them to me.

THE WITNESS: May I be excused then?

THE COURT: Yes, you may go get the letters from your file.

THE WITNESS: The exhibit which you have handed to me appears to be identical with the copy that I did retain.

MR. HENDRICKS: At this time, your Honor, we would move the admission of Government's Exhibit 8.

MR. GOODMAN: No objection.

THE COURT: Let it be admitted as Government's Exhibit 8.

(Whereupon Government's Exhibit 8 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Miss Quintana, if I could show you what's been marked for identification as Government's Exhibit 9, there appear to be five checks there, each one dated, for purposes of identification, the 16th of January, 1979, in the amount of $1,000; is that correct?

A That's correct. That's what the exhibit reflects.

Q One dated the 12th of February, 1979, in the amount of $1,000?

A So reflected here.

Q One dated the 9th of March, 1979, in the amount of $1,000.

A So reflected.

Q One dated the 12th of April, 1979, in the amount of $1,000?

A Again reflected.

Q And one, the final one dated the 14th of May, 1979, in the amount of $1,000?

A That's correct.

Q Do you recognize these as cashier's checks which you sent to Judge Claiborne pursuant to your agreement relating to the Sarnow matter?

A I recognize that the checks are within the same time frame and I could corroborate that they were, if I could compare the numbers on receipts I retained.

Q Feel free to compare them.

A The numbers of the receipts for cashier's checks that I retained match the numbers on Exhibit 9.

Q All right. And are these, to the best of your knowledge then, true and correct copies of the cashier's checks which you sent to Judge Claiborne, that's Government's Exhibit 9, along with the transmittal letters which you have already identified as Government's Exhibit 8?

A As far as I know, they are the same.

MR. HENDRICKS: We will move the admission, your Honor, at this time of Government's Exhibit 9.

MR. RAGGIO: No objection, your Honor.

THE COURT: They will be admitted.

(Whereupon Government's Exhibit 9 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Miss Quintana, would you look at the backs, particularly addressing your attention to the endorsements on the backs of these five cashier's checks.

A (Complies.) I have looked at them.

Q Do you recognize the signature of Judge Claiborne on the back of those checks, ma'am?

A There's only one which appears to be his signature as I recall it, and that is check No. 156708. The others I couldn't say with certainty.

Q All right. So they may or may not be?

A They may or may not be. The one that I gave you the number of, 156708, most closely resembles his signature as I recall it. I might state that the discoloration of these instruments doesn't help.

Q Miss Quintana, in all, how long did you work for or with Judge Claiborne?

A I began to work with him either in the latter part of 1963 or the early part of 1964 and except for the years 1967 to 1969, I worked with him continuously to September, 1978.

Q And did you have occasion to, during that period of time, to see his signature on legal documents, legal correspondence and other documents in the office?

A Of course I did.

Q All the time; is that correct?

A Frequently. Quite frequently.

MR. HENDRICKS: Thank you. I have nothing else.

CROSS-EXAMINATION

BY MR. RAGGIO:

Q Miss Quintana, you said that you worked with Mr. Claiborne when he was an attorney for a number of years, and how many years was that all together?

A I think it comes out somewhere around 15. It was quite a long period of time.

Q And did that coincide with your early years in the practice of law?

A It did in the state of Nevada. I had practiced law in the state of New Mexico prior to my coming to Nevada.

Q So when you came here, your first association was with then Harry Claiborne, the lawyer?

A It was.

Q As a matter of fact, did he give you your real opportunity to enter the practice of law in this state?

A He did.

Q During all the years in which you worked with him, did he delegate to you a great deal of responsibility as a practitioner in the field of law? Did you work together?

A We worked together and we worked very well. We worked in different areas of the law. My contribution was principally in the field of legal research and drafting.

Q In the years that Mr. Hendricks asked you about working with Mr. Claiborne when he was a lawyer, how would you characterize your relationship with Judge Claiborne?

A I think we had a superb professional relationship.

Q And how do you find him to be in the practice of law?

A Completely ethical and honorable.

Q And when it came to terminating this relationship, when Judge Claiborne assumed the bench in September of 1978, when you had this case pending involving Mr. Sarnow, was that a perfectly agreeable understanding that you had insofar as the division of the fee?

A It was not only agreeable, my reaction at the time was that it was generous. I asked, I advised Judge Claiborne on the telephone as I recall that the money had been received and it was he who suggested the way in which the fee would be divided.

Q As a matter of fact, had a great deal of the work on that case already been done and completed by September, 1978?

A Yes. By far the very largest part had been done. Maybe two or three percent remained.

Q And looking at Exhibit 8, which has been introduced, and these are the letters of transmittal which you sent, and as I understand it, you sent a letter along with each of the checks which you sent to Judge Claiborne?

A That's correct.

Q Looking at the letters, especially the first one, it would indicate that there was some reason why there were five payments to Judge Claiborne of $1,000 each over a period of several months. What was that reason?

A The reason was that Mr. Sarnow provided me with a series of checks that were dated, so that after the first check came due, the next would be approximately a month later before it would be payable.

Q So that Mr. Sarnow in fact had given you some post-dated checks totalling all together, $ 10,000, that is the total amount of the fee?

A That's correct.

Q And so there wasn't any agreement of any kind between you and Judge Claiborne that he wanted to receive it in five payments, as I understand it, was there?

A Oh, no, nothing like that. It was Mr. Sarnow's decision to send the checks in that fashion.

Q And as each check date became current, is it my understanding that you went down and obtained the cashier's check for one-half of each of these checks? That is, Mr. Sarnow's checks were for $2,000, I would assume; is that correct?

A That's correct.

Q And you went down and I assume cashed them or deposited them and then you obtained a cashier's check for one-half and sent that on to Judge Claiborne on the dates indicated in the letters?

A Yes. The only reason that I did that was that at that time I was in another professional association, and I did not have an independent bank account. This was sort of a very limited situation which I felt wouldn't justify opening a bank account to transfer the fund so that was the easy way to do it.

Q And on Exhibit 9 which are the five cashier's checks, they are clearly made out and were made out at your direction, each for $1,000 and made payable to Harry E. Claiborne; isn't that correct?

A That is correct.

Q Was there any instruction ever given to you by Judge Claiborne at any time in connection with these payments that you should hide these payments or the fact that payments were being made to Judge Claiborne?

A Absolutely not.

MR. RAGGIO: Nothing further.

MR. HENDRICKS: No further questions, your Honor.

THE COURT: Gentlemen, before we release Mrs. Quintana, there were further questions, perhaps that deal with the disposition of the business. She has not been asked anything about that. Is there not any desire on the part of either side to question her? I just don't want to bring her back here. I take it there are no further questions. Thank you, Mrs. Quintana. You may be excused.

(Whereupon the witness was excused.)

(Whereupon the witness was duly sworn.)

ANITA PRAYTOR, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MS LITTLE:

Q Would you please state your name for the record and spell it?

A My name is Anita Praytor, P-r-a-y-t-o-r.

Q And Miss Praytor, what is your occupation?

A I am operations officer of Valley Bank of Nevada.

Q Where is that bank located?

A In Las Vegas, Nevada.

Q Miss Praytor, in your position at Valley Bank, are you familiar with the bank's procedures for preparing and maintaining records?

A Yes. I am also the custodian of the records.

Q And are you familiar with the various stamps and markings which are placed on banking documents in the normal course of banking business?

A Yes.

Q I am going to show you now what has been previously introduced as Government's Exhibit 9. It's a folder containing five cashier's checks; is that correct?

A Yes.

Q Are those checks issued by your bank?

A Yes.

Q Can you take a look at the back of each of those checks and tell me who endorsed them?

A Each one shows an endorsement signature, Harry E. Claiborne.

Q Now, looking particularly at the check dated February 12th, 1979, on the reverse side, is there a stamp on there?

A Yes.

Q And what does that stamp signify?

A The stamp is the endorsement of the second holder of the check.

Q Can you explain for the members of the jury what that means exactly?

A The first endorsement is that of the payee, Harry Claiborne and it's signed over to the Horseshoe Club which holds an account at Valley Bank.

Q Is the Horseshoe Club a casino?

A Yes.

Q And what does it mean, the fact that the Horseshoe

Club stamp is on that check? What does that mean?
A That the check was cashed there.
Q And taking a look at the check dated March 9th, 1979, what is the stamp on the reverse of that check say?
A It's the same endorsement.
Q As the Horseshoe Club?
A Yes.
Q And what does that stamp signify?
A That the check was cashed there.
Q And looking now at the check dated May 14th, 1979, is there any stamp on the back of that?
A Yes.
Q And what does the stamp say?
A The Horseshoe Club.
Q And what does that signify?
A That the check was cashed there.

MS LITTLE: Nothing further, your Honor.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. RAGGIO:

Q I'm sorry, was your name Praytor?
A Yes.
Q Miss or Mrs.?
A Mrs.
Q Mrs. Praytor, there is a fourth check then and so we

will have the record complete that you weren't asked about with respect to endorsement, would you tell us the date of that check and the nature of the endorsement and the matters that appear on the back of that check?

THE COURT: What is the date of the one you are inquiring about?

MR. RAGGIO: Unfortunately, your Honor, my copy isn't clear, but it would be April the 12th. Do you see one for April 12th?

THE WITNESS: Yes. The endorsement on the back of this one reads "Pioneer Citizens."

BY MR. RAGGIO:

Q There is no endorsement on that one as to the Horseshoe Club; is that correct?

A No.

Q What would that stamp indicate to you with respect to the Pioneer Citizens?

A That the check was presented to Pioneer Citizens to be cashed.

Q And Pioneer Citizens is a bank operating in this state, is it not?

A Yes.

Q If you know, what are the normal banking hours for Valley Bank of Nevada?

A Monday through Friday, 9:00 to 3:30.

Q On Friday, do they sometimes stay a little later?

A Yes. 5:00 o'clock.

Q But in any event, after 5:00 or 5:30, all of the banks in the Valley Bank System are closed as far as any individual transactions, are they not?

A Yes.

MR. RAGGIO: Thank you, your Honor.

Excuse me, let me clear up one matter that's been brought to my attention on the check that we just talked about.

BY MR. RAGGIO:

Q The April 12th check, I think you said it was cashed at Pioneer Citizens. Can you tell from that endorsement whether it was deposited or cashed?

A There is a reference number under the signature endorsement which could indicate that it was deposited.

Q So it was probably deposited in Pioneer Citizens Bank?

A It's possible.

THE COURT: Any other -- I beg your pardon.

REDIRECT EXAMINATION

BY MS LITTLE:

Q Miss Pravtor, if you can take a look at the check dated February 12th, which you have identified the Horseshoe stamp on, what is the time of day that that check was cashed?

A The stamp reads February 12th at 11:33 a.m., 1979.

Q And are those banks in the Las Vegas area open at 11:33 a.m.?

A Yes.

Q And taking a look at the next check dated March 9th, what is the time of day that that was cashed?

A 8:46 a.m.

Q And what time do banks usually open in Las Vegas, 9:00 o'clock?

A Valley Bank opens at 9:00.

Q So in other words, twelve minutes later the bank would have been open?

A Yes.

MR. GOODMAN: Objection. 14.

MS LITTLE: Excuse me, your Honor.

BY MS LITTLE:

Q And all of these checks you say were issued at your bank?

A Yes.

Q Could they have been cashed at your bank?

A Yes.

Q There wouldn't be any fee or anything for cashing a cashier's check?

A No.

Q Where is your bank located in relation to the Federal Courthouse?

A We have a branch very close, couple of blocks.

Q Is there also a building, the Valley Bank building right across the street?

A Oh, there is one, yes.

MS LITTLE: Nothing further.

MR. RAGGIO: Nothing further, your Honor.

THE COURT: May this lady be excused?

MS LITTLE: Yes, your Honor.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

DANNY ROBERT HUCKABY, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MS LITTLE:

Q Please state your full name and spell your last name.

A Danny Robert Huckaby, H-u-c-k-a-b-y.

Q Mr. Huckaby, where do you live?

A Sparks, Nevada.

Q And what is your occupation?

A I am an accountant.

Q And where do you work?

A The Holiday Hotel and Casino.

Q Could you describe briefly for the members of the jury your duties and responsibilities at the Holiday Hotel.

A Yes. I am the controller and that entails the overseeing of the accounting function and the casino cashier's cage.

Q And in that regard, are you familiar with the process wherein the casino grants credit and cashes checks?

A Yes.

THE COURT: Please get closer to the microphone, if you will.

BY MS LITTLE:

Q I am going to show you what's been introduced as Government's Exhibit 9, a folder of five cashier's checks and ask you to take a look at the check dated January 16th, 1979. Looking at the back of that check, do you see a stamp there?

A Yes, I do.

Q And what does the stamp say?

A Well, what I can see of it, it says Carta Hotels, Inc., Holiday Hotel special account and it's got the account number on it.

Q Is that a stamp relating to your hotel casino?

A Yes, it is.

Q And what does the samp on that check mean?

A It means the check was deposited into the account of the Holiday Hotel. It's an endorsement. Our endorsement stamp for deposit only to our general account.

Q Is there another endorsement on the back of that check?

A It's -- I can see it's a signature. Is that what you are talking about?

Q Who is the check made out to?

A The check is made out to Harry E. Claiborne.

Q And did he endorse it on the back?

A There is an endorsement on the back, yes.

Q Does that appear to be Mr. Claiborne's signature?

A Well, I wouldn't know because I don't know what his signature looks like.

Q But there is a signature on the back?

A Yes.

Q And then there is the Holiday Hotel stamp?

A Right.

Q What can you infer from that if anything?

A That it's pretty reasonable to assume that it was cashed at the Holiday Hotel.

Q Looking at the front of the check, do you see the word "Buster"?

A Yes.

Q What does that mean?

A That would make reference to Robert McClure, who would be the Assistant General Manager at the Holiday Hotel. That would have meant that he would have approved the cashing of the check.

MS LITTLE: Nothing further, your Honor.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. RAGGIO:

Q Mr. Huckaby, Buster McClure or Robert McClure is what, the general manager of the hotel?

A He is the assistant general manager.

Q And to your knowledge, do they often accommodate guests or friends who they know at the hotel by cashing checks?

A Yes, sir.

Q Would that be unusual?

A No, it would not.

Q Is there anything at all unusual about this particular check being cashed at the Holiday Hotel in Reno?

A No.

Q And the name "Buster" on there would indicate that, to you, what?

A It would indicate that he merely approved the, whoever the cashier might be to cash the check.

Q And Mr. McClure doesn't work in the cage, does he?

A No.

Q He is with the administration and would be on the floor or in the executive office?

A That's correct.

MR. RAGGIO: Thank you very much.

MS LITTLE: Nothing further, your Honor.

THE COURT: May Mr. Huckaby be excused?

MS LITTLE: Yes, your Honor.

THE COURT: Thank you, Mr. Huckaby.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

FRANK ROTHMAN, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Rothman, would you give us your full name and spell your last name, please?

A My name is Frank Rothman, R-o-t-h-m-a-n.

Q How are you employed?

A I am employed by the MGM United Artist Film Corporation.

Q How are you employed there?

A I am the chairman of the board and chief executive officer.

Q You are also an attorney as well, are you not, Mr. Rothman?

A Yes, sir.

Q And you practiced law for some period of time before joining MGM?

A Yes, sir.

Q During the course of your being an attorney, did you come to meet a man named Sid Wyman?

A I did.

Q How did you -- well, what was your relationship with Mr. Wyman?

A He was an acquaintance and also a distant relative of one of my partners in the practice of law.

Q Did there come a time that you were the executor of his estate?

A Yes, sir.

Q Approximately when was that?

A I do not recall the date of his death, but I became the executor immediately after his death.

Q As his executor, was it your responsibility to hire other attorneys to represent that estate?

A Yes, sir, it was.

Q Did you in fact hire some attorneys to represent the estate?

A Yes, sir.

Q And was one of those attorneys Bruce Hochman?

A Yes, sir.

Q Did you hire Mr. Hochman to handle tax matters related to the Sid Wyman estate?

A Mr. Hochman's firm was retained to handle a specific tax problem, not the general tax problems.

Q His firm was hired, but he was the primary attorney within the firm, was he not?

A Yes, sir.

Q Do you know Judge Harry Claiborne?

A Yes, sir.

Q And was he an attorney who had a claim on the estate at one time?

A Judge Claiborne filed a claim against the estate for services that he had rendered while he was a private attorney for Mr. Wyman.

Q And they were legal services, were they not?

A Yes, sir.

Q What was the amount of the claim that he filed against the estate?

A Again, I don't have the specific number, but it was in the range of approximately 35, $36,000.

Q Now, at the time that claim was filed, who had the authority to approve a claim and authorize the release of funds?

A I did.

Q Could you tell us how mechanically that worked once you approved a claim, how did a person get the money?

A If I may, I would like to explain what I did, if that would be permissible.

When Mr. Wyman died and the estate was opened, there began coming into the estate many, many, many creditor's claims.

I did not, at that point, know how much money the estate would have, how many creditors we would get, so I arbitrarily denied all of the claims, with the intent that when I was able to determine where I was in the estate, I would begin then to honor the claims.

So my initial act was simply to deny every claim of every person, no matter what it was.

Q Now, once you decided to approve a claim for whatever reason, how mechanically did the person making the claim get their money?

A Check was written.

Q By whom?

A In some instances by the estate, if the estate had in my possession liquified cash, in other instances or in another instance where Mr. Hochman at my request who had liquified cash belonging to the estate.

Q Now, you mentioned that Judge Claiborne was one of the claimants to the estate; is that correct?

A He was, sir.

Q Did there come a time that you received a communication from him regarding the payment of his claim?

A Yes.

Q I would show you now what has been marked as Government's Exhibit No. 10 and I would ask you if that is the communication that you received from Judge Claiborne?

A Yes.

Q Can you identify the writing in the upper right-hand corner of that document?

A Yes. That's the handwriting of my secretary.

Q And what if anything does that indicate regarding the manner in which this document was maintained?

A That she filed it in my personal file.

Q When?

A September of 1980.

Q Is the letter itself dated?

A No, sir.

Q The letter has a letterhead on it, does it not?

A Yes, sir.

Q And what is that letterhead?

A United States District Court, Judge Claiborne.

Q It's the chambers of Judge Harry E. Claiborne?

A Yes.

Q Do you recognize the handwriting on this document?

A Not really.

Q Was a copy of this document maintained by you in the regular course of your business under your direction?

A Yes. I would ordinarily keep everything that came to me and this was so kept as indicated by the note.

MR. SHAW: We would move the admission of Government's Exhibit No. 10, your Honor.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 10 was duly admitted into evidence.)

BY MR. SHAW:

Q Mr. Rothman, would you read that exhibit, please, to the jury?

A "Dear Frank: Would you please try to work out a way that I could get my money from Sid's estate. For the first time in my life, I am desperately in need of money. Regards, Harry."

Q And that's written in longhand, is it not?

A Yes, sir.

Q What if anything did you do after receiving this letter?

A At the time that I received the letter, the estate that I had or the assets of the estate that I had in our office for the Wyman estate was not in liquified form. We had bonds and things that were not readily turned into liquified money. Mr. Hochman, who was handling the tax matter for the estate had a very large amount of cash that belonged to the estate, which resulted from a settlement he had made with the Government on behalf of the Wyman estate. And so I made a phone call upon receipt of the letter to Mr. Hochman and Mr. Hochman was not in the country or he was on vacation somewhere, and so I asked to speak to his partner, George DeRoy who I knew personally, and knew very well.

I said, "Geroge, I would like to honor Judge Claiborne's claim at this time. You have the funds that belong to the estate. Would you please write a check for the sum of the claim," which as I recall was somewhere in the vicinity of $35,000. He didn't know anything about the matter. He didn't know anything about the estate, but I am sure he trusted me. And so he said he would do it, and he did.

Q Do you know whether he sent that check directly to Judge Claiborne or whether he sent it to you?

A No, I am sure -- I am reasonably positive -- well, I have no distinct recollection. I am reasonably sure he sent it directly to Judge Claiborne.

Q Had he sent it to you, what would you have done with it?

A Sent it to Judge Claiborne.

MR. SHAW: Thank you. That's all.

THE COURT: Cross?

/////

CROSS-EXAMINATION

BY MR. RAGGIO:

Q Mr. Rothman, I am Mr. Raggio, one of Judge Claiborne's attorneys.

A Yes, sir.

Q If I told you the amount of $37,500, would that refresh your recollection as being the amount of the claim?

A Yes, sir. I wouldn't quarrel with that.

Q With reference to the claim that was filed by Judge Claiborne, in order that there be no misunderstanding, that claim was filed, as I recall, if I am right, while he was a judge, but was it for services rendered before he became a judge?

A Yes, sir.

Q And do you recall at this time the nature of the claim on which that fee was based?

A Well, I do not know, Mr. Raggio, precisely what the services were, except to this extent: I knew very clearly that while Judge Claiborne was not a judge, but a private lawyer, he represented Mr. Wyman.

I know for example that he worked in the matter which ultimately resulted in Mr. Hochman getting the money from the Government.

Q And that was something that resulted in Mr. Hochman at that point having about $500,000 as a result of a settlement with the Internal Revenue Service or something like that.

A Yes, sir. It was a very substantial settlement in the magnitude of $500,000.

Q I may be interrupting but do you recall a situation where Judge Claiborne represented Mr. Wyman once in Reno with a number of other individuals here in connection with the matter in court here in Reno and do you recall that one?

MR. SHAW: Objection.

THE WITNESS: I do, sir.

MR. SHAW: Move to strike the answer.

THE COURT: Does he recall it was the only question.

MR. RAGGIO: Yes, your Honor.

THE COURT: What did he say?

THE WITNESS: He said yes.

THE COURT: What's the next question.

MR. RAGGIO: The next question is -- I want to have the witness tell us the services on which the claim was based, but I am trying to get to that.

THE COURT: Well, if he is familiar with it. If he is just reciting what Judge Claiborne may have told him, that's different.

MR. RAGGIO: No, your Honor.

MR. SHAW: Your Honor, I object on relevancy. He has testified it is a legal fee. He is now going into at least two separate cases relating to Sid Wyman. He already said he didn't know which one related to the fee that he's talking about here. He already testified to one having something to do with $500,000 and now he is going into a different one with some action in Reno. If there is some relevancy, perhaps it's redirect again.

THE COURT: I take it you are going back to what was rendered for the $37,500, are you not?

MR. RAGGIO: Exactly, your Honor.

THE COURT: Well, if he knows and if he was in on it to that extent so that he knows what the then Mr. Claiborne did by way of legal services, I will permit him to answer. If he is just guessing or if he got the information from Judge Claiborne or prior to his being Judge Claiborne, then I cannot permit it.

MR. RAGGIO: All right.

BY MR. RAGGIO:

Q Were you familiar with that case?

A Yes, sir, I was familiar with the fact that Judge Claiborne -- Mr. Claiborne, forgive me, represented Mr. Wyman in a matter here in Reno.

Q And if you know, was he paid for those services?

A I don't know the extent of the financial arrangements, the billing and so forth. I don't know the answer to that.

Q Was there a time later when Mr. Claiborne represented some individuals in Las Vegas in which Mr. Wyman was involved, but did not specifically represent Mr. Wyman?

MR. SHAW: Objection, your Honor. Now we are into a third case and he doesn't know if it relates to the $37,500.

MR. RAGGIO: Your Honor, Mr. Shaw is mischaracterizing. This is the case on which the claim is based. That is what I am getting to.

MR. SHAW: But he has testified he doesn't know what the fee agreement was on the case.

THE COURT: Once again, if he knows. He didn't really testify to anything last time except as to the other matter here in Reno. That's all. He doesn't know what the nature of the services were. He didn't say he knew the nature of the services. Just a lawyer, attorney/client relationship.

MR. RAGGIO: That was my question, your Honor.

THE COURT: Well, I will permit you to ask him if he knows whether there was an attorney/client relationship.

BY MR. RAGGIO:

Q In connection with the matter I asked you about, do you know whether or not there was such an attorney/client relationship?

A I can't say with certainty. What I am trying to say and perhaps I am not saying it well, I knew that Mr. Claiborne -- I knew personally that Mr. Claiborne represented Mr. Wyman in a series of matters including the Reno matter, including the tax problem I have already alluded to. Of that I know of my own knowledge. I do not know what the relationship was with respect to this present matter that you are asking me about.

Q Okay. Did you have any doubt at any time that the claim for services, legal services filed by then Mr. Claiborne was a valid claim?

A No doubt in my mind that it was a valid claim.

Q And even though it was part of your procedure as you explained to initially have all the claims denied, there came a point in time, did there not, where you approved the claim?

A Yes, sir.

Q And is that the basis on which you authorized the payment of the $37,500 to Judge Claiborne?

A Yes, sir.

Q If you can tell us, what was the nature of the relationship between Judge Claiborne and Sid Wyman during Mr. Wyman's lifetime.

MR. SHAW: Objection, your Honor. It doesn't relate to the legal fees that we discussed during the direct examination.

MR. RAGGIO: Well, then we will take him on direct, your Honor.

THE COURT: All right. You may take him on direct examination.

Do you understand the question, Mr. Rothman?

THE WITNESS: Yes, sir, I do.

BY MR. RAGGIO:

Q Do you know the nature of the relationship?

A Yes.

Q Would you describe that relationship between Mr. Wyman and Harry Claiborne?

A Well, I believe it was a twofold relationship in terms of professional conduct, Mr. Claiborne was Mr. Wyman's lawyer. Mr. Wyman believed in him almost as much as any --

MR. SHAW: Objection, your Honor, it's not a description of the relationship.

MR. RAGGIO: It certainly is, your Honor.

THE COURT: You will have to stick to what the relationship was.

THE WITNESS: I will try, your Honor.

THE COURT: Not what Mr. Wyman believed and so on.

THE WITNESS: I will try. It was a very close, professional relationship in which Mr. Claiborne represented Mr. Wyman in every kind of problem that Mr. Wyman had and every kind of legal matter that Mr. Wyman had.

In addition to that, they had a very close personal relationship, in which they were mutual friends, confidants, and if I can use a trite word, "buddies".

BY MR. RAGGIO:

Q Over what period of time, Mr. Rothman, did you have an occasion to observe that relationship?

A Oh, my goodness. I'd say possibly in excess of ten years.

MR. RAGGIO: Thank you. Nothing further.

MR. SHAW: Nothing further, your Honor.

THE COURT: May Mr. Rothman be excused, gentlemen?

MR. SHAW: Yes, your Honor.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

GEORGE DE ROY, GOVERNMENT'S WITNESS, SWORN

THE COURT: Please give your full name for the record and spell your last name, sir.

THE WITNESS: My name is George DeRoy, capital D-e-capital R-o-y.

DIRECT EXAMINATION

BY MR. SHAW:

Q Mr. DeRoy, how are you employed?

A I am an attorney.

Q How long have you been an attorney?

A Since 1951.

Q Are you associated presently with a law firm?

A Yes.

Q And could you give us the name of that firm?

A Hochman, Salkin and DeRoy.

Q How long have you been with that firm?

A Since January of 1969.

Q Is the Hochman portion title of that firm Bruce Hochman?

A Correct.

Q Do you know Frank Rothman who just testified?

A Of course.

Q Could you tell us generally how you know Mr. Rothman?

A I first met him in law school. We were classmates. I have known him professionally and socially ever since.

Q Did there come a time that you, at Mr. Rothman's request, wrote a check to Harry E. Claiborne?

A Yes. Actually I signed it. I didn't write it.

Q Could you describe the circumstances surrounding your involvement in the writing or signing of that check?

A Yes. Bruce Hochman was away. Frank Rothman called me and said that we were holding funds in our client's trust account, some of which was due to Judge Claiborne and would I please write a check for him.

I said, "Is it okay?" and he said, "Of course. I will stand good for it." And I said, "Fine," and I wrote it.

Q Or caused it to be written?

A Caused it to be written.

Q You signed it, did you not?

A I did indeed.

Q I would show you now what has been marked as Government's Exhibit No. 11, which appears to be a check. I ask you if you are able to identify that document.

A That is my signature. And that's one of our checks and it looks like the check that we have just referred to. It is as far as I am aware.

Q It is a preprinted check form with Hochman, Salkin and DeRoy at the top, is it not?

A Yes.

MR. SHAW: We would move the admission of No. 11, your Honor.

MR. RAGGIO: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 11 was duly admitted into evidence.)

BY MR. SHAW:

Q Could you tell us the dollar amount of that check?

A It's $37,500.

Q And is it made out to Harry E. Claiborne?

A Harry E. Claiborne.

Q What is the date of that check?

A August 15th, 1980.

Q Do you recall how soon after you received the telephone call from Frank Rothman that you caused the check to be written?

A Same day.

Q Did you sign it the same day as well?

A Yes.

Q And did you do something with it that same day?

A Yes. I sent it to Frank by messenger.

Q So to the best of your memory, it was personally delivered to Frank Rothman?

A Yes.

Q Both of your offices are located in the same city; is that right?

A In the general Los Angeles area. I think he was in Century City and I was in Beverly Hills then.

Q Did you prepare a memorandum either to Mr. Hochman or to the file regarding your involvement in the signing of this check?

A Yes.

Q I now show you what has been marked as Government's Exhibit No. 12 and ask you if this is that memorandum that you prepared?

A Yes.

Q Is that copy maintained in your office in the usual course of business?

A Yes.

Q Is it the usual course of business of your law firm to maintain copies of correspondence such as this?

A Yes.

MR. SHAW: We would move the admission of No. 12, your Honor.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 12 was duly admitted into evidence.)

BY MR. SHAW:

Q Would you read that please to the ladies and gentlemen of the jury including the date?

A Memorandum, August 18th, to Bruce I. Hochman from George DeRoy re Wyman Estate. "On Friday, August 15th, Frank Rothman called and indicated that he had received a personal communication from Harry Claiborne, indicating dire urgent need of the $37,500 due him from the Wyman funds. Frank also advised me that whatever inheritance or estate tax procedures were holding up the distribution had just been completed and that he was sure the funds were available. He offered to guarantee a repayment of the funds in 24 hours notice out of the estate if we would advance the funds immediately to be delivered to Judge Claiborne.

"Naturally these funds were tied up in commercial paper not due until September 8th, but we danced around a little and got the money together and sent it over to Frank along with the attached letter.

"We will be mailing back a signed copy.

"As you can see, it is entirely in your discretion whether the payment was appropriate or not. It's got my initials, my secretary's initials and it indicates an attachment which I guess was the letter."

MR. SHAH: Thank you.

CROSS-EXAMINATION

BY MR. RAGGIO:

Q Mr. DeRoy, I am Mr. Raggio, one of the attorneys for Judge Claiborne.

In the memo which is the Exhibit No. 12, there is an indication that Mr. Rothman spoke with you, he indicated that something had been holding up the distribution of the estate inheritance or estate tax procedures.

To your knowledge, had the estate of Sid Wyman been held up for a considerable period of time?

A I don't really have personal knowledge, but that's my understanding.

Q Did you have any understanding as to how long it had been held up by this date?

MR. SHAW: Objection.

THE COURT: If he doesn't have any personal knowledge, how would he know?

MR. RAGGIO: I think he said he had an understanding. I was trying to explore the understanding.

THE COURT: It's his understanding it was held up. Now you are asking him how long. How would he be able to answer that?

MR. RAGGIO: I don't know unless he has some understanding of it.

MR. SHAW: Your Honor, the understanding would be based on hearsay.

THE COURT: Sustained.

BY MR. RAGGIO:

Q Mr. DeRoy, in connection with this memorandum, the last sentence to Mr. Hochman as to whether or not the payment was appropriate, you don't mean to imply in any way that there was anything illegal about the payment to you?

A No, sir. All I meant by that was that it was then due and that it's delivery by me was okay.

Q Your relationship with Mr. Rothman who was then the executor of the estate was one of trust, I assume?

A Yes.

Q Do you have any reason to, at that time, to believe that Mr. Rothman who just testified here would in any way tell you to do something that was not appropriate?

A No. As of matter of fact, obviously my understanding was to the contrary. I was sure he wouldn't.

MR. RAGGIO: Thank you very much.

MR. SHAW: Nothing further.

THE COURT: Thank you, Mr. DeRoy. I take it you may be excused.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

PETER ECHEVERRIA, GOVERNMENT'S WITNESS, SWORN

THE COURT: Please state your full name and spell your last name, sir?

THE WITNESS: My name is Peter Echeverria, spelled E-c-h-e-v-e-r-r-i-a.

DIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Echeverria, you are a retired attorney; is that correct?

A Yes, sir.

Q And you know the defendant in this case, do you not, the now Judge Harry E. Claiborne?

A For 35 years, yes.

Q Now, did you have any cases pending with Mr. Claiborne at the time that he became a judge?

A Yes.

Q And how many cases?

A One.

Q What is the caption or title to that case?

A State of California vs. Jack VanSickle.

Q Did both of you represent Mr. VanSickle?

A Yes.

Q So you were on the same side of the matter; is that right?

A Yes, sir.

Q Did the two of you have a fee agreement with Mr. VanSickle?

A Not an agreement in advance. We were going to charge him based upon the results we achieved for him.

Q Now, did you and then Mr. Claiborne have an agreement between the two of you as to how that fee would be split?

A We divided the work and divided the fee.

Q 50/50?

A Yes, sir.

Q Did there come a time that you received a fee in that matter?

A We received fees several times, but there came a time when I received the last wrap-up fee.

Q What was the approximate amount of that wrap-up fee?

A Around $85,000. The case lasted something over ten years. It went to the United States Supreme Court.

Q When was it approximately that you received that last wrap-up fee?

A You have my check, but I think it's December, 1979, but I would defer to the date on the check.

Q What if anything did you do after you received that last fee from Mr. VanSickle?

A I gave it to my secretary who divided it half for Mr. -- for Judge Claiborne and half for myself.

Q I would show you what has been marked as Government's Exhibit No. 13 and ask if that is the check that you asked your secretary to prepare, made out to Judge Claiborne?

A It is.

Q Do you recall whether you caused that check to be prepared at or about the same time that you received the funds from the VanSickle matter?

A Yes. It would have been after I received the funds and while we were wrapping all our 1979 accounts.

Q Is that your signature at about the bottom of the check which is Exhibit 13?

A Yes.

Q Now, are you able to identify the endorsement on the back of Exhibit 13?

A It appears to be the signature of Harry Claiborne and it comports with my recollection of what his signature is.

Q And the check is a preprinted check with your name on the top of it, is it not?

A It's a typed check that's typewritten.

Q I mean your name is preprinted on the top of the check, isn't it?

A Yes. Peter Echeverria Special Account.

Q And the rest of the check, other than your signature, is typed?

A Yes, and there are some other printings, Security Bank has got some printing on it. It's printing, typed and my signature and a stamp.

Q How did that check get from you to Judge Claiborne?

A I handed it to him and he took it from me.

Q Where were the two of you at the time?

A In the chambers of the Federal Courthouse in Las Vegas, Nevada.

Q What was the date of your handing that check to Judge Claiborne?

A It was some time right after the 1st of January of 1980, but you also have my travel ticket for that time.

Q You recall it being after the first of the year of 1980?

A It would have been the first couple of days of 1980, yes.

MR. SHAW: Your Honor, we would move No. 13.

THE COURT: All right, Government's Exhibit 13 may be admitted.

(Whereupon Government's Exhibit 13 was duly admitted into evidence.)

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. RAGGIO:

Q Mr. Echeverria, you were -- you indicated that you delivered the check to Judge Claiborne some time after this date, you mentioned something about your travel records?

A Yes.

Q And I don't think you were asked anything further about that. To your recollection, the check was dated December 31, 1979, that's Exhibit 13. When, if you know, in point of time, did you deliver that and in what manner to Judge Claiborne?

A Mr. Raggio, the Government has my ticket stub and my hotel sheet at Caesar's where I stayed. I was on my way to Houston because at that time I was doing trial work for the Hughes Estate and I stopped off in Las Vegas, stayed the night at Caesar's. The following morning drove into the Federal Courthouse, visited with my good old friend, Harry Claiborne, gave him the check and went back out and took the plane on to Houston where I went to work on the Hughes case.

Q Since I don't have the original records, if I told you --

THE COURT: We will get the original travel records there somewhere. The witness can get to the point far quicker.

MR. SHAW: Your Honor, we would be happy to move the introduction of it. Mr. Echeverria said he didn't have any problem with his memory, that it was after the first of the year.

MR. RAGGIO: I am just trying to establish the date.

BY MR. RAGGIO:

Q If I show you what has a marking on it as Government's Exhibit 14, perhaps you can look at that and tell us, does that indicate to you the date that you were in Las Vegas?

A Yes.

Q And looking at that record, what would that indicate is the date?

A January 4th. I flew out of here on the 3rd with a ticket to Las Vegas, Houston and return. I flew out of here on the 3rd; I stayed at Ceasar's the night of the 4th. I am on board there and then I delivered the check to him the following morning.

Q So would it have been the 5th that you delivered the check?

A Yes, sir.

Q But it was in January of 1980?

A Yes, sir.

Q Mr. Echeverria, you indicated that you are a retired attorney. Have you also held some public offices?

A Yes.

Q Would you state what public offices you have held?

MR. SHAW: Objection, your Honor. I don't think either of us are thinking that there is any credibility problem with Mr. Echeverria.

MR. RAGGIO: I will take him on direct, your Honor, because I intend to ask him some other questions pertaining to his public service here.

THE COURT: I have no objection, but I don't see the relevancy unless you are going to ask some other questions that may be pertinent.

MR. RAGGIO: Yes, I do, your Honor.

THE COURT: All right. Go ahead.

THE WITNESS: I was admitted to the bar in 1949, May of 1949. In 1951 and 1953, then Allan Bible was Attorney General. I acted as a special bill drafter for the Legislature. I was in charge of the drafting of all legislation in both houses during those two terms.

In 1959, I was a candidate and elected to the State Senate and that was when we had one senator per county before reapportionment. My term expired in 1963. I did not seek re-election. In 1963, then Governor Sawyer appointed me to the Nevada State Planning Board. I was reappointed by Governor Laxalt. Whenthat four year term expired, I was then reappointed again by Governor O'Callaghan to the State Planning Board. I served on the State Planning Board for ten years, the last two years of which I was chairman. In April, 1973, Governor O'Callaghan asked me to be the chairman of the Gaming Commission. I acted as the chairman of the Nevada State Gaming Commission from April of 1973 through April of 1977. My term expired and I did not take a reappointment and I am presently the chairman of the Governor's Advisory Committee on Wild Horses. Governor Bryan has appointed me on that and I hold that office now.

Q Mr. Echeverria, during what years again were you chairman of the Gaming Commission of the State of Nevada?

A April of '73 through April of 1977.

Q During that time, did you have occasion to preside at a session or sessions of the Gaming Commission when an individual named Sid Wyman appeared for licensing?

A Yes.

Q Do you know who represented him at that time?

A Harry Claiborne.

Q On those occasions rather?

A Yes.

Q And I think you also indicated that you had known Judge Claiborne for some 35 years?

A Yes.

Q And in that period of time, what was the nature of your acquaintance or relationship with Judge Claiborne.

MR. SHAW: Objection, your Honor. May we approach the bench?

THE COURT: I don't see the relevancy. If you will ask a specific question and get to it.

MR. RAGGIO: I will withdraw that question.

BY MR. RAGGIO:

Q In connection with the VanSickle case about which you were asked, how long did that association with Mr. Claiborne, then Mr. Claiborne, occur?

A From the beginning of the State of California vs. VanSickel to the end of it in January of 1980, we worked on that case about twelve years.

Q And that was a criminal case, was it?

A Yes, sir.

Q How serious a charge?

A Very serious.

MR. SHAW: Objection.

THE COURT: What is the relevancy of all of this?

MR. RAGGIO: I am trying to establish, your Honor.

THE COURT: You have established that Judge Claiborne as a lawyer represented, along with this witness, Mr. VanSickle. Whether it was a serious case or whether it was a minor two-bit case hasn't got a thing to do with it.

MR. RAGGIO: Your Honor, the Government has introduced in evidence a check for $42,000 and I don't want to leave any inference that the fee was not earned.

THE COURT: I heard about a $37,500 check. There has been no controversy by --

MR. RAGGIO: Excuse me. This check, Government's Exhibit 13, is for $42,450. I don't want to leave with this jury any inference that this is a fee that wasn't earned for a substantial amount of work over a long period of time.

MR. SHAW: He's not being charged with overcharging clients.

THE COURT: There is no contention by anyone in this case that Judge Claiborne was not entitled to be paid, and we are not going to retry the VanSickle case. We will be here forever.

MR. RAGGIO: All right, your Honor.

THE COURT: I sustained the objection.

BY MR. RAGGIO:

Q Mr. Echeverria, when you delivered this check in the manner in which you did to Judge Claiborne, who was at that time Judge, did you deliver the check in this manner merely as a matter of convenience?

A Well, I was on my way to Houston and I made trips often down there at that time, and I was working heavily on the Hughes cases and I thought it would be just as convenient to drop it off and have a nice friendly visit with my old friend, Harry, to take him the check as it would be to mail it.

Q Was there any request by Judge Claiborne that this payment to him be other than in an open, forward manner?

A No.

Q Did Judge Claiborne ever indicate to you in any way that you should make a secret of this payment to him?

A Never.

THE COURT: What is the amount of the check?

MR. RAGGIO: It is $42,000 --

THE COURT: I asked the witness.

THE WITNESS: The check, your Honor, is $42,452.34.

THE COURT: All right. Thank you.

THE WITNESS: You're welcome.

BY MR. RAGGIO:

Q Mr. Echeverria, that represented half of the final payment, did it not?

A Half of the proceeds. There was some interest that came.

Q As a matter of fact, you had to go through court and obtain a judgment really, did you not, to get this fee?

MR. SHAW: Objection.

THE WITNESS: Yes.

MR. SHAW: Objection, I would ask your Honor to instruct the witness not to answer.

THE COURT: I would again say, it doesn't make a particle of difference.

MR. RAGGIO: Very well.

BY MR. RAGGIO:

Q In all of your dealings with Judge Claiborne in connection with the VanSickle case, did you find him to be an ethical practitioner?

MR. SHAW: Objection.

THE COURT: I will permit that.

THE WITNESS: Yes, I did. In all my dealings with the VanSickle case and every other case that we had.

MR. SHAW: I would move that be struck.

THE COURT: Confine yourself to answering the question, please.

THE WITNESS: Yes. I found him to be very honest and very honorable.

MR. RAGGIO: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Echeverria, you don't know -- have any way of knowing whether Harry Claiborne or Judge Claiborne reported that check on his income tax, do you?

A I have this way of knowing. I have great confidence in Harry Claiborne. I know that he obeys the law. I know he is a strict adherent of the law.

THE COURT: Answer the question and don't make a speech. All politicians make speeches.

THE WITNESS: That's my way of knowing and I think he paid his taxes on it.

BY MR. SHAW:

Q Do you think he reported that check on his income taxes?

A I think he did because he banked it in the bank the next day and it's endorsed in the Pioneer Citizens Bank the following day.

Q Your knowledge of Judge Claiborne obeying the law could not possibly include whether or not he concealed any income from anyone, could it?

A My knowledge from what I know about Judge Claiborne is based on 35 years of imminent acquaintance and fondness for him.

MR. SHAW: Your Honor, we would move Exhibit No. 14. Apparently defense wanted the Caesar's Palace records. We would be happy to introduce them.

THE COURT: All right.

MR. RAGGIO: No objection.

I have nothing further.

(Whereupon Government's Exhibit 14 was duly admitted into evidence.)

THE COURT: May this witness be excused, gentlemen?

MR. SHAW: Yes, your Honor.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

RICHARD NYE, GOVERNMENT'S WITNESS, SWORN

THE COURT: Please give your full name and spell your last name, sir.

THE WITNESS: Richard Nye, N-y-e.

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DIRECT EXAMINATION

BY MR. HENDRICKS:

Q Mr. Nye, where do you live?

A I live in Las Vegas.

Q What is your occupation?

A I am the manager for Pioneer Citizens Bank.

Q In Las Vegas?

A In Las Vegas.

Q Could you describe briefly what the duties of manager are?

A Well, it's the overall management of the branch, lending and the operational functions.

Q And in your capacity as manager, are you familiar with the maintenance of records by the bank in the normal course of its operations?

A Yes.

Q And you are familiar with those records, that is the techniques that are used to maintain them and the kind of records that are normally maintained in the operation of the bank?

A Yes.

Q Okay. Let me show you, if I might, sir, a document which has been marked for identification as Government's Exhibit 15.

Could you tell us, please, what that is?

A That's a signature card for a checking account carried at Pioneer Citizens Bank.

Q What account number?

A The account of Harry E. Claiborne, and there's account number 4032751.

Q Okay. Is that the kind of record, that -- is that a true and correct copy of the record maintained in the normal course of business of your bank?

A Yes.

MR. HENDRICKS: I would move the admission of Government's 15.

MR. JOHNSTON: Could I see it just to compare with what I think is a copy, your Honor?

THE COURT: You may look at it.

MR. JOHNSTON: Thank you, your Honor. No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 15 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Now, let me show you the document which has been marked as Government's Exhibit 16. First, as to the upper right-hand corner of the exhibit, there are two items in the upper right-hand corner, check in the amount of $3381 and a deposit slip. Could you identify those as records or copies of records maintained by your bank?

A Yes, I can.

Q With respect to the check, can you tell on which account that check is made payable?

A It's made payable to Harry E. Claiborne and it was deposited into the account of Harry Claiborne.

Q On whose account was it drawn?

A The check was issued by James Brown.

Q Can you read the date there?

A 1/5/79.

Q What is the relationship between the check for $3381 and the deposit slip which is the record of your bank?

A That check was deposited into his account by using this deposit slip.

Q Okay. Now, there are four additional items below the first two, comprised of three checks and -- well, a number of checks and a deposit slip. Could you please identify those for us?

A The first one is a check by, issued by James Brown payable to Harry E. Claiborne dated January 19th, '79, in the amount of 17,500.

The second is a check drawn by James Brown, payable to Harry Claiborne dated January 26th, 1979, for $84.30.

Q And is there an additional check there?

A The third check is a United States Treasury check.

Q Now, do you see a deposit slip at the bottom of that?

A Yes.

Q Can you tell us what if any relationship exists between the three checks, including the $17,500 check and the deposit slip?

A Yes. All three checks are listed on the deposit slip which would put the money into the account of Harry Claiborne.

Q On what date?

A February 2nd, 1979.

Q All right. Now, would you address your attention to the statement or what appears to be the statement on the left-hand side of the exhibit?

A Yes. That's a copy of the checking account statement for Harry E. Claiborne.

Q And is that the same account as the account to which the two deposit slips were made?

A Yes.

Q What is the relationship, if any, between this particular checking account statement and the two deposits which are reflected on the right-hand side of the exhibit, Government's Exhibit 16?

A Both deposit slips are shown as deposits on the statement.

Q All right. Now, are all of these records records which are maintained in the normal course of business of your bank?

A Yes, they are.

MR. HENDRICKS: Move the admission of Government's 16.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 16 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Now, Mr. Nye, if I might show you Government's Exhibit 17, would you please take a look at that?

A (Complies.)

Q Let me ask you first if you would address your attention to the item on the upper right-hand corner of the exhibit.

A Yes. This is a cashier's check.

Q In what amount?

A For $1,000, dated April 12th, 1979.

Q To whom is that $1,000 check made payable?

A To Harry E. Claiborne.

Q Can you tell who the purchaser is of the cashier's check?

A Purchased by Annette -- um, I can't make out the last name. It's Q-u-i-n-t-a-e-a.

Q That's about as much as you can make out?

A That's all I can make out, yeah.

Q That's in the amount of $1,000?

A Yes.

Q And I notice that there is what appears to be a deposit slip directly under that $1,000 check?

A Yes, there is.

Q Okay. Can you tell us whether that deposit slip is one used by your bank?

A Yes, it is.

Q And what does it reflect?

A It reflects the thousand dollar cashier's check to be deposited into the account of Harry E. Claiborne.

Q So does that say that the deposit slip reflects the deposit of the cashier's check which appears in the upper right-hand corner of the exhibit?

A That's correct.

Q And now addressing your attention to the checking account statement on the left-hand side of Government's Exhibit 17, can you tell us what that is?

A It's a copy of the checking account statement of Harry E. Claiborne.

Q All right. And is it for the same account to which the $1,000 check was deposited?

A Yes, it is.

Q What relationship, if any, sir, exists between the deposit slip, the deposit on the right-hand side and the checking account statement on the left-hand side?

A This shows a deposit of $1,000 represented by this deposit slip.

Q Okay. And are all of these records true and correct copies of records maintained in the normal course of operation of your bank?

A Yes, it is.

MR. HENDRICKS: Move the admission of Government's 17.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 17 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Mr. Nye, let me show you Government's Exhibit 18. Government's Exhibit 18 consists of three checks and a deposit slip on the right side and a checking account statement on the left side; is that correct?

A That's correct.

Q Can you identify for us briefly the three checks on the right side?

A The first check is a check drawn by W. W. Callaway, payable to Harry E. Claiborne in the amount of $6. dated April 25th, 1979.

Q And the next check?

A The next check is a U. S. Treasury check in the amount of $1,272, payable to Harry E. Claiborne dated May 11th, 1979. The third check is a U.S. Treasury check in the amount of $3,000, payable to Harry E. Claiborne dated May 11th, 1979.

Q And below those three checks, what is the bottom item there on Government's Exhibit 28?

A It is a deposit slip for the account of Harry E. Claiborne.

Q Is it the same account that we have been talking about at Pioneer Citizens Bank?

A Yes, it is.

Q What relationship exists between the three checks on the upper right-hand side of Government's Exhibit 18 and the deposit slips on the lower right-hand side of Government's Exhibit 18.

A Three checks are listed on the deposit slip as a deposit into the account of Harry E. Claiborne.

Q And now, sir, if you would address your attention to the left side of Government's Exhibit 18, can you tell us what that is?

A That is a copy of a checking account statement for

Harry E. Claiborne.

Q What relationship, if any, Mr. Nye, exists between the deposit reflected on the right-hand side and the checking account statement on the left side?

A It shows a deposit from this deposit slip into the checking account.

Q Okay. And are all of these records ones kept in the normal course of operation of your bank?

A Yes, it is.

MR. HENDRICKS: Move the admission of Government's 18.

MR. JOHNSTON: Objection on the ground of relevancy. I don't think that these tie in with any of the items that are in controversy here.

MR. HENDRICKS: Your Honor, these documents are relevant for purposes of tax calculations which will be made and introduced by the Government's summary witness.

THE COURT: I will admit it. If necessary, we will drag it out at a later time.

(Whereupon Government's Exhibit 18 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Mr. Nye, would you please look at Government's Exhibit 19.

A (Complies.)

Q Mr. Nye, Government's Exhibit 19 consists of a check with a deposit slip and a checking account statement on the left-hand side?

A Yes.

Q Could you please first identify the check in the upper right-hand corner of Government's Exhibit 19?

A Okay. The check is a check drawn by James Brown in the amount of $7,000 payable to Harry Claiborne, dated July 19th, 1979.

Q All right. And the deposit slip?

A The deposit slip reflects the same check to be deposited to the checking account of Harry Claiborne.

Q And is the deposit slip one used by your bank?

A Yes, it is.

Q To deposit items to accounts?

A Yes.

Q Maintained with your bank?

A Yes.

Q What if any relationship -- what is the item on the left?

A It is a copy of the checking account statement of Harry E. Claiborne.

Q And what if any relationship exists between the deposit on the right and the checking account statement on the left?

A It shows a deposit in the amount of $7,000 from the deposit slip.

Q And are these documents maintained in the normal course of operation of your bank?

A Yes, it is.

MR. HENDRICKS: Move the admission of Government's Exhibit 19.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 19 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Mr. Nye, if I might, let me show you Government's Exhibit 20. Government's Exhibit 20 is a check, deposit slip and a checking account statement, correct?

A Yes, it is.

Q What is the check in the upper right-hand corner of Government's Exhibit 20?

A It is a check drawn by James Brown dated November 13th, 1979, in the amount of $250 payable to Harry E. Claiborne.

Q And is that check reflected in the deposit slip in the lower right?

A Yes, it is.

Q And is that a deposit slip with your bank?

A Yes, it is.

Q And what if any relationship exists between the $250 deposit and the checking account statement on the left-hand side of Government's Exhibit 20?

A It is shown as a deposit taken from the deposit slip.

Q Are all of those documents true and correct copies of documents maintained as business records by your bank?

A Yes, they are.

MR. HENDRICKS: Move the admission of Government's 20.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 20 was duly admitted into evidence.)

THE COURT: Mr. Hendricks, I think it's time for a midafternoon break. I take it this witness will be longer than anticipated.

Members of the jury, you may take the midafternoon recess for ten to fifteen minutes depending on how long it takes you.

(Whereupon a recess was taken.)

THE COURT: All jurors are present.

All right, Mr. Hendricks, you may proceed.

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BY MR. HENDRICKS:

Q Mr. Nye, Government's Exhibit 21, I have here. Would you please take a look at that. Government's 21 is a check, deposit slip and a bank statement, is it not?

A Yes, it is.

Q And can you identify the check in the upper right-hand corner, please?

A Okay. It's a check dated December 31st, 1979, in the amount of $42,452.34, drawn by Peter Echeverria, payable to Harry E. Claiborne.

Q And that's actually a copy, is it not?

A A copy of the check, yes.

Q What is the item in the lower right?

A A copy of the deposit slip for the account of Harry E. Claiborne.

Q What's the date of the deposit slip?

A January 4, 1980.

Q What is the relationship between the check for $42,000 and the deposit slip on January 4th, 1980?

A The deposit slip reflects the check as deposited to the account of Harry E. Claiborne.

Q I am sorry.

A Of Harry E. Claiborne.

Q What is the item on the left-hand side of the exhibit?

A Copy of the checking account statement of Harry E.

Claiborne.

Q What is the relationship if any between the deposit on the right and the checking account statement on the left of Government's Exhibit 21?

A It shows the deposit to the account.

Q Are all of those records that you have in front of you that comprise Government's Exhibit 21 kept in the normal course of business of your bank?

A Yes, they are.

MR. HENDRICKS: We would move the admission of Government's 21.

MR. JOHNSTON: No objection.

THE COURT: It may be admitted.

THE COURT: Cross-examine?

CROSS-EXAMINATION

BY MR. JOHNSTON:

Q Mr. Nye, there isn't anything unusual or exceptional about any of these records that you have been identifying, is there?

A Not that I can notice, no.

Q They all appear to be perfectly regular in form?

A Yes.

Q They are simply records of checks that were deposited in Judge Claiborne's accounts, are they not?

A That's correct.

Q You don't have any information as to whether those deposits consttiuted income or something else, do you?

A No idea, no.

MR. JOHNSTON: No further questions.

THE COURT: May Mr. Nye be excused?

MR. HENDRICKS: Yes, your Honor.

THE COURT: Thank you very much, Mr. Nye. We will excuse you.

Next witness?

(Whereupon the witness was excused.)

(The following testimony of Joseph C. Wright was previously transcribed.)

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RENO, NEVADA, THURSDAY, AUGUST 2, 1984

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(Whereupon the witness was duly sworn.)

JOSEPH C. WRIGHT, GOVERNMENT'S WITNESS, SWORN

THE COURT: Please give your full name for the record and spell your last name, sir.

THE WITNESS: Joseph C. Wright, W-r-i-g-h-t.

DIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Wright, how are you employed, sir?
A Public accountant.
Q How long have you been a public accountant?
A Thirty years, thirty-five years.
Q Are you associated with a firm of public accountants?
A Yes.
Q What is the name of the firm?
A Apple, Wright & Apple, a Professional Corporation.
Q Where is that corporation located?
A 333 Rancho Drive, Las Vegas.
Q Have you been a public accountant for all of that thirty-five years in the state of Nevada?
A Yes.
Q How long have you lived in Nevada?
A Since 1942 when I came out of the service.
Q Over the years have you had occasion to hold any

offices in any professional associations?

A Yes.

Q Could you tell us about those associations and the offices you held?

A I belonged to the National Society of Public Accountants, presently I am the Nevada State Director of the organization, and I belong to the Nevada Society of Public Accountants and have for some twenty-five years, and I have held all the offices in that state several times.

Q Would you describe for us what a public accountant is? How that could be different from a regular accountant and/or a certified public accountant?

A A public accountant serves businesses and individuals, the same as a CPA. CPAs can be in private practice or in public practice, hold private jobs as well as public practice, the same as public accounting profession.

Q So --

A We are all public accountants.

Q But to be a certified public accountant, you take a written test; is that correct?

A Right.

Q But both certified public accountants and public accountants perform generally the same type of functions?

A The same functions.

Q You know Judge Harry E. Claiborne, do you not?

A Yes.

Q When did you first meet then Mr. Claiborne?

A 1943 when we were in the service at Nellis Air Force Base.

Q You were in the service together at Nellis Air Force Base in Las Vegas?

A Yes.

Q After you got out of the service, is that when you began being a public accountant?

A Yes.

Q Was Mr. Claiborne a client of yours at that time?

A Yes.

Q When was that that he began being a client of yours?

A In either '49 or '50, late '40's or early '50's.

Q And when did you stop doing public accounting work for him?

A In 1980.

Q Were you continuously doing work for him between 1949 or '50 and 1980?

A Yes.

Q Would you tell us what type of work you performed for him during that 30 years period?

A We did this detail bookkeeping work and filed his 1040 returns.

Q Now, can you tell us by "detailed bookkeeping work" what you mean?

A We would prepare check registers, listing his checks and other expenses, listing his deposits and receipts as income summarizing those on a monthly basis, and file his payroll tax reports, doing his bank reconciliations, and at the end of the year, summarizing all of this and, with additional information to file his income tax return.

Q Now, the bookkeeping work that you would do for him related to his entire law practice; is that correct; his law office?

A Yes.

Q And the income tax work you did for him was personal income tax returns?

A Yes.

Q Now, let's focus for a moment on the years 1970 to 1977. During that seven year period, were you also performing these dual functions for Mr. Claiborne?

A Yes.

Q During that seven year period, what types of documents would you get periodically to assist you in your work?

A On a monthly basis we received his bank statement directly from the bank; they mailed it to our office. And then he would send his check stubs, certain documents as to expenses and receipts for income. Those would come from his office. I would either pick them up or he would drop an envelope off. They would come directly from his office.

Q What would you do? What documents would you prepare with those documents that you received?

A We would prepare cash receipts, journal listing deposits and/or receipts, and numerical listing of his checks in a check register; prepare the individual comp sheets for the employees and quarterly reports and other by-products of the bookkeeping function.

Q During that period of time, how would Mr. Claiborne tell you or how would he identify for you the fees that he had earned?

A Through his bank deposits, basically our routine was to include all deposits as fee income, unless he identified it otherwise.

Q So the deposit information that you would receive directly from the bank was understood by both you and Mr. Claiborne to represent fees; is that correct?

A Yes.

Q Unless otherwise discussed between the two of you?

A Yes.

Q Were there ever occasions where there were deposits that were not fees that he had earned?

A Yes.

Q How would you learn on those occasions that those deposits were not fees?

A From Mr. Claiborne.

Q Did you have any way of knowing during that seven or eight year period what deposits were fees other than talking with Mr. Claiborne?

A No.

Q Now, could you tell us the procedures that you used during that seven or eight year period from 1970 up through 1977 for the preparation of Mr. Claiborne's personal income tax returns?

A Well, after summarizing each month in the detail bookkeeping function as I have stated, the secretary, or bookkeeping staff would prepare summaries of all the twelve months and summarize the twelve months into the one figure like a trial balance that I would take and then continue investigation of additional fees or additional expenses with Mr. Claiborne.

Q And when would you --

A And finally prepare the return after he and I had explored all the possibilities for additional fees or expenses.

Q What season of the year would you and Mr. Claiborne go over this final list?

A Some time after the first of the year and up until the time that we timely filed a return, which could include extensions.

Q Did there come a time in the work that you performed for Mr. Claiborne where you learned of a $75,000 deposit into his bank account during the year 1978?

A Yes.

Q Could you tell us approximately when and how you first learned of this $75,000 deposit?

A My secretary notified me that she had come across a deposit in his bank account that there was no receipt for and she therefore didn't know what it was, and I would have to find out.

Q What type of bank account document alerted your secretary to that?

A It just appeared as a deposit on the bank statement.

Q On the normal monthly bank statement?

A Yes.

Q And that would be the normal bank statement that was sent routinely directly from your office to the bank?

A Yes, uh-huh.

Q I am going to show you a document that has been marked as Government's Exhibit No. 22. First of all, I would ask you to identify what that document is, if you are able to.

A This is Mr. Claiborne's cash and sales record for 1978.

Q This is a document that was maintained in your office in the regular course of business?

A Yes, it is.

Q And is the regular course of business in your office to keep records such as this; is that right?

A Yes, uh-huh.

Q Directing your attention to the last page of Exhibit No. 22, could you tell us if there is any reference in that document to the $75,000 transaction that you have just referred to?

A Yes, there is.

MR. SHAW: First of all, your Honor, I would move Exhibit No. 22 into evidence.

MR. JOHNSTON: No objection, your Honor.

(Whereupon Government's Exhibit No. 22 was duly admitted into evidence.)

THE COURT: No objection. It will be admitted.

BY MR. SHAW:

Q Would you tell us how this $75,000 deposit is treated by your office on that document that you are referring to?

A First of all, the pages are headed fees in one column and then a column, just simply noted as other and then the final column is for deposits.

This item of $75,000 was put in the other column, indicating we don't know what it is, and that she has indicated that he doesn't know what it is by the bottom.

Q On the bottom there is a note to you from your secretary; is that right?

A Yes.

Q Could you read that, please?

A It says, "Jay, I don't have a receipt for this amount, $75,000, so I don't know what this deposit is."

Q Can you explain what the relationship was during this time period of receipts to deposits that was in your office?

A Yes. At that time we were --

MR. JOHNSTON: Objection. Already asked and answered.

MR. SHAW: I don't believe he has referred to receipts at all in his testimony, your Honor.

THE COURT: I will permit the answer.

THE WITNESS: Would you repeat your question, please.

BY MR. SHAW:

Q What was the function served by receipts in your office during this time frame of August and September of 1978?

A At this time, receipts for everything that came into the office was being made.

Q By who?

A Mr. Claiborne's secretary.

Q So Mr. Claiborne's office was making receipts for all of the money coming into this office?

A Yes.

Q And what would his office do with those receipts?

A Send me a copy of them.

Q And would your secretary then match the receipts that came into your office on the bank accounts?

A Yes.

Q And is that what she is referring to in the note that there is no receipt for the $75,000?

A That is right.

Q Are you able to say when this last page of Exhibit No. 22 was prepared?

A It would be after August, possibly in September. You do one month work in the next month. This is the August work and we no doubt would be doing it in September.

THE COURT: That was September, 1978?

THE WITNESS: Yes, your Honor.

BY MR. SHAW:

Q Now, during September, on or about September of 1978, did you prepare any other accounting-type documents that recorded the $75,000 deposit?

A Yes. We recorded the check register.

Q Let me show you Exhibit No. 23. I asked you first if you could identify that document for us?

A Yes. This is Mr. Claiborne's check register for 1978 for his regular business account.

Q And this document is maintained by your office in the regular course of business?

A Yes.

MR. SHAW: We would move the admission of No. 23, your Honor.

MR. JOHNSTON: May I ask a question on voir dire, your Honor?

THE COURT: What is the objection to the exhibit? I can't permit you to interrupt.

MR. JOHNSTON: Well, I will object on the ground of relevancy. On the ground that this, as far as I can see, this exhibit is a record of expenditures and not receipts. It's not relevant.

THE COURT: Well, what is the relevancy, Mr. Shaw?

MR. SHAW: Perhaps I could ask the witness to explain. There is a reference there -- there are a couple of references on there to not only similar expenses on the same date, similar checks written on the same day, but also to the receipt as well I believe of $75,000.

THE COURT: I will permit it.

BY MR. SHAW:

Q Does Exhibit No. 23 -- well, could you explain the treatment of the $75,000 deposit in Exhibit No. 23?

A It was treated as income.

Q And could you identify what page that would appear on?
Is there a paper clip on August 1978 page?

A I believe so.
Yes, there is a list of deposits in a column in the check register and that is the last item, August 31st, $75,000, totaled with the other deposits as income.

Q And approximately what month and year would this document and that entry with respect to the $75,000 have been made?

A That was August, 1978.

Q Was the entry made in August of 1978?

A It would have been actually made probably in September of '78.

Q Did you have any knowledge of the $75,000 transaction prior to September of 1978?

A No.

Q Mr. Wright, did you have occasion to prepare Mr. Claiborne's 1977 income tax return?

A Yes.

Q I show you what's been marked as Government's Exhibit No. 1. I ask you if that is the 1977 tax return that you prepared for Mr. Claiborne's signature?

MR. JOHNSTON: Excuse me. I am sorry. I didn't hear the question. May I have it reread, your Honor.

THE COURT: Whether the tax return was prepared by Mr. Wright for Judge Claiborne's signature or then Mr. Claiborne.

MR. JOHNSTON: For 1977?

THE COURT: That's correct.

MR. JOHNSTON: I will object on the ground of relevancy.

MR. SHAW: I haven't offered.

MR. JOHNSTON: I am objecting to the question.

THE COURT: Overruled.

BY MR. SHAW:

Q Are you able to answer that question or should I try it again?

A Would you try it again, please.

Q All right. Is Government's Exhibit No. 1 the 1977 personal income tax return that you prepared for the signature of Mr. Harry Claiborne?

A Yes, it is.

Q And does his signature appear on that document?

A Yes, it does.

Q Are you able to say from viewing that document the date that that was sent to the Internal Revenue Service?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: It's not coming in yet, gentlemen. I will let that go in. Let the witness answer.

THE WITNESS: It was receipted by Ogden Service

Center on June the 15th, 1978.

Q Directing your attention to the last page of Government's Exhibit No. 1, which appears to be a photocopy of an envelope, are you able to say what the date of the postmark in Las Vegas, Nevada, is?

MR. JOHNSTON: Same objection, your Honor.

THE COURT: What is the relevancy of this now?

MR. SHAW: Well, your Honor --

THE COURT: You are trying to get the exhibit in?

MR. SHAW: No, your Honor, that was just another question to the date it was mailed.

THE COURT: Well, we have gone far enough.

MR. SHAW: I will withdraw it.

THE COURT: This defendant is not charged with anything with respect to the calendar year 1977, and there should be no inference that there is anything wrong with that return at all.

MR. SHAW: Thank you, your Honor.

BY MR. SHAW:

Q Mr. Wright, could you tell us from your review of Exhibit No. 1 which is Mr. Claiborne's 1977 tax return, what is the total income that he reported as having earned in that year, that is the total adjusted gross income which would appear on Line 21.

MR. JOHNSTON: Objection, the exhibit is not in evidence, your Honor.

THE COURT: Well, I understand that.

MR. JOHNSTON: We are not going to have the witness read from the exhibit, I hope that's not in evidence.

THE COURT: All right, members of the jury, step out if you will, please. I am sorry. You will not get paid for your mileage walking back and forth to the jury room.

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Now, Mr. Shaw, you want to get the whole exhibit in of course and I have not yet ruled on it.

MR. SHAW: I understand that, your Honor. I was just proceeding on what I thought was the understanding that those two areas that we were interested in.

THE COURT: Go ahead with the witness in the absence of the jury and I will let him answer the question in the absence of jury. I want to know what the relevancy is.

MR. SHAW: Your Honor, there are two areas. The total adjusted gross income of the sum $230,000 is to show the change from the income from then to 1978 and therefore a motive. Number two would be the fact of tax liability itself which appears --

THE COURT: You have got plenty of evidence on your case in chief of -- merely by the failure to report, according to the tax returns, certain receipts in the forms of checks that were never reported, according to the Government, and were cashed at casinos. That's going to get you to the jury.

MR. SHAW: We need to get farther than the jury. We need to show that he had a motive to lie and cheat on his taxes.

THE COURT: I understand in the final analysis, have to do that, but the only thing now is all you want to do is to show a motive. I don't know that -- you have got plenty of evidence of intent. You can show what his salary was, it's a matter of public record as far as federal judges are concerned. It's affixed by Congress. I don't remember when. It went up the other day incidentally.

MR. SHAW: Congratulations.

THE COURT: And Judge Claiborne, I think, is also a benefactor of that slight raise that we got, and we got some more coming to us retroactive January 1st. There's no secret about the judge's salary.

Now --

MR. SHAW: Well, the jury may not know what his income was prior to when he became a judge though. It's the comparison.

THE COURT: I understand that, but you have got evidence in here that he was a highly successful practitioner, and I am not convinced that the 1977 return is necessary at all to that extent.

MR. SHAW: It's just between those two items. If he could just give, you know, the testimony is --

THE COURT: But then you are getting into that high figure of 300 and some thousand dollars and that -- when I was practicing law, about 44 percent of whatever I took in went out.

MR. SHAW: That wasn't the question I asked him. I asked him the adjusted gross income which takes into account all the expenses. It was going to be this $237,000 figure. It was not the $350,000 figure.

THE COURT: You are talking about his adjusted gross as distinguished from -- what was his adjusted gross? Mr. Hendricks told the jury in the opening statement $370,000.

MR. SHAW: That was prior to expenses. The figure I was asking for was the adjusted gross, which took into account the expenses and that figure is $237,800 --

MR. JOHNSTON: If the Court please, that is not the correct figure either. The adjusted gross income is $225,617.35.

MR. SHAW: Well, that's for the witness to answer, I would think, rather than either one of us.

MR. JOHNSTON: May I show Mr. Shaw it's labeled very clearly on the return as adjusted gross income. Why don't we ask the witness that.

MR. JOHNSTON: Because I don't want the witness reading from an exhibit that's not in evidence.

THE COURT: Well, he prepared the exhibit. He can go back and get his own notes, I suppose, and work sheets as to when he -- what he did and come up with the same answer without the tax return, I suppose. He would just have to do the work all over again.

MR. JOHNSTON: My position would be that that's equally irrelevant, your Honor.

THE COURT: Of course it's going to come out sooner or later anyway.

MR. SHAW: That's the problem, your Honor. We don't know that. We don't know whether Judge Claiborne is going to choose to testify or not, and I don't know how else it's going to come out.

THE COURT: I am not concerned about that. You have got enough to go to the jury with the unreported items. I am sorry, but I am not going to let it in on this witness in chief at this time. Now, you may have to recall Mr. Wright.

MR. SHAW: May I argue the second, more important point that we wanted him to read a different figure from this exhibit?

THE COURT: Go ahead with the evidence.

MR. SHAW: The other figure I want to ask him, your Honor, relates to the tax liability that was owed and that's directly corroborative of what this witness's testimony is going to be, that Mr. Claiborne, Judge Claiborne, told him that -- he borrowed it to pay his taxes.

THE COURT: That I believe you can properly bring out because that's typed up with the $75,000 deposit and the check that Judge Claiborne issued which will come in evidence. I will permit you to do that, and let him make reference to the tax return for 1977 for that limited purpose without introducing the return.

MR. JOHNSTON: May we understand, your Honor, that the figure that is going to be permitted to come in is the figure for the amount that was payable with the return, not the amount of the tax liability because there was some credits that were applied to the tax liability as it's initially computed.

THE COURT: The amount that was due and payable as a result of filing that 1977 return.

MR. JOHNSTON: Thank you, your Honor.

THE COURT: All right. Let's call the jury then.

(Whereupon the following proceedings were held in open court before the jury.)

THE COURT: All right. All jurors are present. You may proceed, Mr. Shaw.

MR. SHAW: Thank you, your Honor.

BY MR. SHAW:

Q First of all, Mr. Wright, could you tell us what tax liability means and how that would relate to a 1040 personal income tax form?

A Tax liability is what you owe the Internal Revenue because of having had certain income and being allowed to deduct certain deductions.

Q Directing your attention, if I may, to Page 2 of Exhibit No. 1, which is the 1977 income tax return you prepared for Mr. Claiborne's signature, are you able to tell us from that document what the total tax liability of Judge, rather, then Mr. Claiborne was as reported on the '77 return.

MR. JOHNSTON: Objected to as irrelevant. This is contrary to what our agreement was while the jury was absent, your Honor.

THE COURT: The amount of tax liability due and payable by the defendant as a result of the 1977 income tax return.

MR. SHAW: Thank you, your Honor. I would adopt that question with your permission.

THE WITNESS: The amount showing as due at the time he filed the return was $74,211.32.

BY MR. SHAW:

Q And what does that amount consist of?

A Total tax liability, less payments made during the year and plus under estimated penalities, added to that figure to June 15th.

Q What was the amount of the penalties? What part of that figure consists of the penalties?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Haven't we gone far enough?

MR. SHAW: All right, your Honor. I will withdraw the question.

BY MR. SHAW:

Q On June 15th, 19 -- well, first of all, you testified earlier that it was on or about June 15th, 1978 that this return was filed, did you?

A Yes.

Q And on that date, did Mr. Claiborne pay the IRS the $74,211.32 in taxes and penalties that he owed?

A No.

Q Was he required to pay that at that time?

A Yes.

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Sustain the objection.

BY MR. SHAW:

Q When did he pay the 1977 taxes and penalties that he owed?

A August the 31st of 1978.

Q How did you learn about that payment that Mr. Claiborne made on August 31st, 1978?

A As we were entering the checks that had come in the bank statement from the bank, a check was in there for the payment of the tax liability, including penalties and interest.

Q Do you have Exhibit 23 in front of you, Mr. Wright?

A Yes.

Q Is that check in that amount that you have just indicated, does that appear on Exhibit No. 23?

A Yes, it does.

Q Would that be on the second clipped page of that exhibit?

A Yes.

Q Again, Exhibit 23 is what document, what type of document is that?

A That is the check register and also lists the deposits as income. It is the check register for 1978.

Q You mentioned a moment ago that on or about June 15th, 1978, Mr. Claiborne owed some $74,000 in taxes and late penalties, and then you have just referred to a check in the amount of $76,000. Can you tell us, if you know, why he would have sent a check for $76,000?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Unless this gentleman prepared something and figured it and so on, I don't think that's proper.

Did you work it out for Judge Claiborne in the preparation of the payment of this check? Did you figure it at all?

THE WITNESS: No, sir.

THE COURT: I sustain the objection.

BY MR. SHAW:

Q What would the effect have been if any upon Mr. Claiborne's tax liability of not paying the $74,000 on June 15th, 1978, as required?

MR. JOHNSTON: Objected to as calling for speculation.

THE COURT: I will permit it.

THE WITNESS: He would incur additional interest and penalties for late payment.

BY MR. SHAW:

Q Now, to your knowledge, did either you or Mr. Claiborne receive any documents from the Internal Revenue Service that reflected a total amount owed?

A I would imagine he did. He wouldn't know what to pay if he hadn't.

MR. JOHNSTON: I will ask that the answer be stricken, your Honor.

THE COURT: I will strike the answer. If you want to ask him, did he receive any documents, fine. How does he know what Judge Claiborne received.

MR. SHAW: Unless there was a conversation, but I will word it that way.

BY MR. SHAW:

Q Did you receive any documents from Internal Revenue with the amount owed by Mr. Claiborne on it?

A Not to my recollection.

Q Do you know whether it is the regular course of business to send out bills when there are additional tax liabilities owed?

A Yes. To the taxpayer.

Q Had Mr. Claiborne paid his 1977 taxes on June 15th, 1978, how much money would he have saved by avoiding the penalties and interest?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: You may ask him the difference between the check and the tax liability if you wish to. I guess he could compute that.

BY MR. SHAW:

Q Could you tell us roughly the difference between Mr.

Claiborne's tax liability on June 15th and the check that he actually wrote to the IRS on August 31st?

A Approximately $2,000.

Q Now, when and how did you first learn of the $75,000 deposit?

MR. JOHNSTON: Objected to as already asked and answered.

MR. SHAW: I am directing his attention back to that area.

THE COURT: We certainly have been over that. He picked it up from bank statements; he entered it on his check register material.

MR. SHAW: Very well.

BY MR. SHAW:

Q After you first learned of that $75,000 deposit, did you have occasion to discuss that matter or raise that issue with Mr. Claiborne at all?

A Yes.

Q Why did you ask him about that deposit?

A I asked to know what it was in order to know whether to include it as a fee or not.

Q And that was in the course of your preparation of his 1978 tax return?

MR. JOHNSTON: Objected to as leading.

THE COURT: Sustained.

BY MR. SHAW:

Q Was that in the course of any work that you were performing for him?

A Yes.

Q What work was that?

A To prepare his 1978 tax return.

Q And what did Mr. Claiborne tell you about that $75,000 deposit into his account?

MR. JOHNSTON: Objected to. No foundation, assumes facts not in evidence that Mr. Claiborne told him anything.

MR. SHAW: He just testified that he had a discussion with him.

THE COURT: Overruled. He said he talked to the defendant.

MR. JOHNSTON: Could we have a foundation, your Honor, as to time and place and persons present?

THE COURT: I ruled. Go ahead.

BY MR. SHAW:

Q What did he tell you about the $75,000 deposit that was into his account?

A That it was a loan.

Q Do you recall approximately when it was that you would have had this conversation with him?

A No, but it would be some time after January 16th or something like that of 1979.

Q Now, did he tell you anything more about that $75,000 deposit other than that it was a loan?

A Just to pay his 1977 income tax.

Q Now, how did you prepare the questions that you had for Mr. Claiborne, the year end questions that you have described with respect to the preparation of his 1978 tax return?

A Well, during the year we normally had questions each month, and my secretary would prepare them and would send them to Mr. Claiborne to get answers for us. Sometimes we got all the answers, sometimes we did not and we would continue those unanswered questions to a subsequent list, and ultimately at -- after the end of the year, we would have a final question list from my secretary, and I would take that and get those answers and continue further questioning with Mr. Claiborne as to whether there was any other fee income or any other expenses that had not been recorded.

Q I show you now what's been marked as Government's Exhibit No. 25. I ask you if you could identify this document?

A Yes.

Q Could you tell us first what type of document that is?

A This is a work paper listing some income and expenses.

Q What was the purpose of this work paper, if you know?

A Preparing to do his 1978 income tax return, identification of items.

Q Identification of items you say?

A (Nods head affirmatively.)

Q Is that yes?

A Yes, uh-huh.

Q Is this in your handwriting?

A Yes, it is. Most of it.

Q Did you prepare this in the normal course of your business as an accounting firm?

A Yes.

MR. SHAW: We would move No. 25, your Honor.

THE COURT: I will let it be admitted. I haven't seen it, but I assume it was prepared by him and so on.

MR. JOHNSTON: If the Court please, his testimony was that most of it was in his handwriting.

THE COURT: Well, he may be questioned either by you or Mr. Shaw as to what is not in his handwriting.

MR. SHAW: Court's indulgence one moment, your Honor.

BY MR. SHAW:

Q Mr. Wright, I would now show you what has been marked as Government's Exhibit No. 25-A, and ask you if that is a fair and accurate portrayal of Exhibit No. 25 that you have just identified?

A Yes, it is.

MR. SHAW: Your Honor, I would move Exhibit 25 so the jury can follow along with Mr. Wright's explanation of this document.

MR. GOODMAN: Your Honor, may we move over here in order to follow?

THE COURT: Yes, indeed.

Mr. Wright, when you are speaking, tne only thing I ask is that be sure that the court reporter gets the information. You don't have the mike down there.

BY MR. SHAW:

Q Mr. Wright, was this document, which is before the jury which is No. 25-A, was that used by you in the preparation of your end of the year question session with Judge Claiborne?

A Yes, it was.

Q Now, could you read for us and use the pointer if that would help you, the first entry, the first couple of lines there of that exhibit.

A This is business income through August. Last deposit is $75,000. "Is there any other fees income that has come in since?"

Q What was the purpose of -- before we get to the other writings, what was the purpose of you placing that question on this work sheet.

MR. JOHNSTON: Objection. Assumes a fact not in evidence and that was that this witness placed it on the work sheet. The testimony was that part of it was in his handwriting.

THE COURT: He was asked why -- did you put that in your writing?

THE WITNESS: Yes, sir.

THE COURT: All right, why did you put it on there, that's the question.

THE WITNESS: To ask Mr. Claiborne what it was. Part of my questioning at the year end in preparation of his return, identifying items as to whether they are income or not.

BY MR. SHAW:

Q Now, at what time did you place the $75,000 figure on this exhibit?

A That would be some time in the spring when we were preparing his 1978 return.

Q At what time in reference to when you wrote this question did you place the $75,000 figure on there?

A At the same time.

Q Did there come a time that you got an answer to your question?

A Yes.

Q And who did you get that answer from?

A Mr. Claiborne.

Q After he gave you the answer, what if anything did you do with that information?

A I deleted it from his income. I did not report it as income.

Q You did not report it on his, the 1978 return as income?

A No.

Q What was it?

A It was a loan.

Q Did you make a notation anywhere as to the answer that Mr. Claiborne gave to you to that question?

A Yes.

Q Where did you make that notation?

A On this document.

Q Could you point it out for us?

A I wrote that it was a loan, not income borrowed to pay tax for 1977.

Q Where did you learn that it was borrowed to pay tax for 1977?

A Mr. Claiborne.

Q Are you able to say when you placed these three notations on this document with respect to the time that Mr. Claiborne gave you that information?

A Some time before we filed the return.

Q Let me rephrase the question. How soon after he gave you that information did you make these notations to yourself?

A At the time he told me I made the notations. At the time of questioning.

MR. SHAW: You may resume the stand if you would, please.

THE WITNESS: Uh-huh.

THE COURT: Are you offering 25-A as an exhibit?

MR. SHAW: Yes, your Honor, I thought I had. We would move 25-A.

MR. JOHNSTON: I will object to this document going in, this poster going into evidence, your Honor.

THE COURT: It's a blowup of 25, isn't it?

MR. JOHNSTON: That's correct, but they have --the original document is in evidence, your Honor.

THE COURT: I understand. What's the harm?

MR. JOHNSTON: I think any time you have anything that's blown up to this size, it tends to assume an importance and existence all of itself, which is far greater than that attributable to the original document.

THE COURT: In final analysis, twelve jurors will have to see this and it may be far more convenient to have the blowup rather than each of the twelve having to go over a particular document that is just in letter size. I will admit it.

THE COURT: I assume the blowup was presubmitted to counsel, was it not?

MR. SHAW: It was not, your Honor. The document itself of course was, but the fact of it being larger.

THE COURT: Well, I beg your pardon. I reverse myself. You are not going to get it in evidence then.

MR. SHAW: May I be heard at a later date about that, your Honor? I don't want to have to excuse the jury.

THE COURT: At the present time, you are not going to get it in evidence.

MR. SHAW: Thank you.

Now, Mr. Wright, are you able to say whether -- strike that.

Was the $75,000 transaction, in your experience with the business of Mr. Claiborne, was that a usual or unusual transaction?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Sustained.

MR. SHAW: May I be heard, your Honor. I think it's important as to his memory of how he treated it.

THE COURT: Well, he says that he questioned Judge Claiborne about all of the items that he didn't have any accounting for, from him as to whether it should be handled differently and so it's just one of the many items that he had to ask him about.

MR. SHAW: All right.

BY MR. SHAW:

Q Mr. Wright, could you identify for us the persons in the spring of 1979 that you would have questioned regarding the source of the $75,000 deposit?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: I will permit that.

THE WITNESS: Mr. Claiborne.

BY MR. SHAW:

Q Anyone else?

A No.

Q Why is it that you would have spoken only with Mr. Claiborne about that transaction?

MR. JOHNSTON: Objection to the corporation. Both of these questions are phrased in terms of what he would have done. I suggest that that is not a proper form of questioning to begin with. It really calls for speculation.

MR. SHAW: It calls for his knowledge in normal routine business practice.

THE COURT: I will permit him to ask him why Judge Claiborne was the only one to whom he would turn.

THE WITNESS: First of all, it's a large item that I would not discuss with any employee. I would have to get the answer from Mr. Claiborne. Second, there is no employees left that would have had any knowledge of this transaction back in 1978. Those employees left in the third quarter of '78 and we are doing this in '79, so there is no employees that would have any knowledge of it.

First of all, if any employees have had any knowledge of it, they would have made a receipt for it back in August when the item came in.

MR. JOHNSTON: I will object and ask that that portion of the answer be stricken, your Honor, as not responsive.

MR. SHAW: It certainly is responsive, your Honor. It's why he would not have talked to anyone other than Mr. Claiborne.

THE COURT: He's answered the question. What was the last part that he said.

(Whereupon the record was read.)

THE COURT: I will strike that because there's evidence here that everything was in a state of pandamonium about that time, and this is a conclusion that Mr. Wright has drawn, and it doesn't necessarily follow when you are closing up an office.

MR. SHAW: Very well, your Honor.

BY MR. SHAW:

Q Mr. Wright, did Judge Claiborne tell you who it was that he had borrowed the $75,000 from?

A No.

Q Did Mr. -- or rather Judge Claiborne show you a note or any other documentation supporting the loan that he had made to get the $75,000?

A No.

Q Did you have knowledge that on or about September 1st, 1978, Judge Claiborne left the private practice of law and became a judge?

A Yes.

Q Do you know from your accounting work for him what happened to his business when he took the bench at that time?

A He just closed it up and it went away.

Q What happened to it from an accounting point of view?

A We wrote off all of his fixed assets, his equipment and leasehold improvements, the balance of the cost of those items we just wrote off.

Q Did you know at that time what if anything he did with his pending cases?

A No.

Q Did Mr. Claiborne tell you that he had entered into an agreement with his associates at that time for the disposition of those cases?

A No.

Q Now, let's direct your attention to the year, calendar year 1979. During 1979 what type of documents were you receiving from Mr. Claiborne or Judge Claiborne or on his behalf with regard to your accounting procedures?

A We still continued for a short period of time to get his business bank statements from the bank. There was very little stuff coming through at that time, just final checks and small deposits and stuff like that that were coming through. Basically it was just very little.

Q Now, I would show you what's been marked as Government's Exhibit No. 26 and ask you if you could identify this document.

A Mr. Claiborne's check register for 1979.

Q What bank did that relate to?

A First National Bank.

Q Who prepared that check register?

A My secretary.

Q Under your direction?

A Yes.

Q Was it prepared by your office in the usual course of business?

A Yes.

MR. SHAW: We would move the admission of No. 26, your Honor.

MR. JOHNSTON: Could I approach the witness just to compare the copy, which I think is a copy of that exhibit but I am not sure.

I have no objection, your Honor.

THE COURT: All right. Let it be admitted in evidence.

(Whereupon Government's Exhibit 26 was duly admitted into evidence.)

BY MR. SHAW:

Q Could you tell us what the date of the entry, last entry, is on that check register?

A August of 1979.

Q Why did you --

THE COURT: August what?

THE WITNESS: 1979.

BY MR. SHAW:

Q Why did you stop making entries in August of 1979?

A We ceased to receive anymore information.

Q Does Exhibit No. 26, which is the document you have just identified for us, does that identify for you any of the legal fees that were received by Judge Claiborne in 1979?

A No.

Q I would show you now what has been marked as Government's Exhibit No. 27. I ask you if you can identify this document for us?

A Yes. This is a check register for 1979.

Q Is that for a different bank?

A Yes. Pioneer Citizens Bank.

Q Who prepared that check register?

A My secretary.

Q Under your direction?

A Yes.

Q Was it prepared in the usual course of business at your office?

A Yes.

MR. SHAW: We would move the admission of No. 27, your Honor.

MR. JOHNSTON: May I again just glance at it, your Honor?

THE COURT: This is on the Pioneer Bank.

MR. JOHNSTON: No objection, your Honor.

THE COURT: Let it be admitted into evidence.

(Whereupon Government's Exhibit 27 was duly admitted into evidence.)

BY MR. SHAW:

Q Does Exhibit No. 27, that is the Pioneer Citizens check register, does that identify any legal fees that Judge Claiborne earned during 1979?

A No.

Q How many entries appear on the entire 1979 Pioneer Citizens check register?

A One.

Q And why -- well, what is the date of that entry?

A January 1, 1979.

Q Do you know why you ceased making entries after that date in 1979?

A I got no more information.

Q From whom?

A From Judge Claiborne.

Q I would now show you the document which has been marked as Government's Exhibit No. 28. I ask you if you can tell us what type of document that is.

A This is a document relating certain facts from Judge Claiborne.

Q Are you able to say whose handwriting it is?

A Yes.

Q Whose is it?

A Judge Claiborne.

Q Is there any writing on that document that is not Judge Claiborne's?

A Yes, I have some entries of my own.

Q Very generally, for now, could you tell us what part of that document has your handwriting on it?

A The right side, lower right side of the document and extreme left side of the document.

Q Does there appear to be a signature at the bottom of that document?

A Yes.

Q Whose signature is that?

A Judge Claiborne.

Q Was the document which is Government's Exhibit No. 28 maintained by your office in the usual course of business?

A Yes.

MR. SHAW: We would move the admission of No. 28, your Honor.

MR. JOHNSTON: May I have a moment, your Honor? Could I look at it, please.

I have no objection, your Honor, but I have a request to make. We have several copies of this document, none of them is completely legible including the one that was made for us by the Clerk's Office. It either cuts off the top or the bottom. Would it be possible for someone to make us a legible copy of the complete document?

MR. SHAW: Your Honor, perhaps Mr. Johnston will have this problem solved for him with the next exhibit, if I may ask Mr. Wright to identify an exhibit regarding that.

MR. JOHNSTON: That doesn't solve my problem, your Honor. I do want a copy for myself.

THE COURT: We will do that at the conclusion of the day session.

/////

BY MR. SHAW:

Q I would show you what has been marked now as Government's Exhibit No. 28-A. Is this a fair and accurate portrayal of Government's Exhibit No. 28, which has just been admitted into evidence?

A It is.

Q Would you please step down again, Mr. Wright?

Now that the jury is able to see it, could you identify the portions of this exhibit that are not Judge Claiborne's handwriting?

A This is my writing and the detailed itemization of deposits on the right side is my writing. And the word "fee" is my writing.

Q Would you read this for us, please. Perhaps you are more familiar with his handwriting.

A I have made application to assume a mortgage at this place. They want a listing from you what my earnings are for 1978, '79, '80 to date from my practice, not earnings on the bench.

Here is the tabulation taken from my deposits and authentic.

Q Would you step one step that way so the people can see it over here.

Are you able to say approximately when you received this letter from Judge Claiborne?

A Some time after January 16th, 1980.

Q Why do you say that?

A That's the last entry on the document.

Q Now, are you able to say what the other end of the time period that you could have received it?

A It would have been after May 22nd, 1980.

Q Well, did you do anything in response to this letter that you received from Judge Claiborne?

A Yes. I wrote letters to financial institutions.

Q Would you return to the stand, please.

THE COURT: I might add, gentlemen, that under Rule 1001, Subparagraph 4 of the Federal Rules of Civil Evidence, it is provided that a duplicate is a counterpart produced by the same impression as an original or from the same matrix or by means of photograph, including the enlargements and miniatures or by mechanical or electronic recording and I don't know a duplicate of the so-called enlargement was not designated, but the original was. My information is that I may ultimately admit it anyway, even through the blowup was not designated as an exhibit.

BY MR. SHAW:

Q Mr. Wright, the letter which is Exhibit 28 that you just identified for us here asks you to write some financial institutions for Judge Claiborne; is that correct?

A Yes.

Q And did you do what he requested you to do?

A I did.

Q I show you now what appears to be three letters marked collectively as Government's Exhibit 29 and ask you if these are copies of those three letters that you wrote to financial institutions at Judge Claiborne's request.

A They are.

MR. SHAW: Your Honor, I am advised that I neglected to move November 28 into evidence. We would move that in at this time.

THE COURT: I think the original has been admitted. As to the blowup, I would rather defer and let you gentlemen enlighten me somewhat as to Rule 1001.

MR. SHAW: Very well.

THE COURT: You want 29 in?

MR. SHAW: Well, yes, your Honor, we would move No. 29.

MR. JOHNSTON: No objection.

THE COURT: These are letters from Mr. Wright to the financial institution?

MR. SHAW: Yes, your Honor.

(Whereupon Government's Exhibit 29 was duly admitted into evidence.)

BY MR. SHAW:

Q Mr. Wright, could you give us the date of the first letter that appears in Government's Exhibit No. 29?

A March 9th, 1980. Stanwell Mortgage Company.

Q Could that be March 7th, 1980?

A Yes, I am sorry.

Q And does that have your signature on it?

A Yes.

Q And it's with your letterhead; is that correct?

A Yes.

Q Would you read that please to the ladies and gentlemen?

A "Stanwell Mortgage Company, 1001 Keno Lane, Las Vegas. Gentlemen: I have been Judge Harry Claiborne's accountant for over thirty years and he has asked me to furnish you the following information concerning his earnings from private practice of law.

"The year 1978, the year he went on the federal bench, his earnings from private practice of law was $78,723.46. His earnings from the private practice of law for the year 1979 was $45,371.93. His earnings from the private practice of law so far in 1980 is $41,000."

Signed Joseph C. Wright.

Q Where did you get the figure $45,371.93 that you told

Stanwell Mortgage Company that Judge Claiborne had earned in 1979?

A From Judge Claiborne.

Q And is that from Judge Claiborne's letter which is Government's Exhibit No. 28?

A Yes.

Q Now, I would ask you to identify the second letter which is part of the Government's Exhibit No. 29 group.

First of all, give us the date of that letter?

A That letter is dated May 22nd, 1980.

Q And that again is on your letterhead, is it not?

A Yes.

Q Is that your signature at the bottom of that?

A Yes.

Q And who is that letter addressed to?

A First National Bank of Nevada.

Q Now, is that in any respects different than the letter that you have just read to Stanwell Mortgage?

A No.

Q And the date is the only thing, the date and the addressee; is that correct?

A That's right.

Q And again you identified the 1979 legal fee income of Judge Claiborne as being $45,371.93?

A That's correct.

Q And again, where did you get that figure from when you wrote to that financial institution?

A From Judge Claiborne.

Q Now, would you please identify the third and final letter that you wrote to the financial institution at Judge Claiborne's request?

A It is dated May 22, 1980, to First Western Savings and Loan.

Q And that's also in Las Vegas?

A Yes.

Q Is that your signature at the bottom of that letter?

A Yes.

Q Does that have the same figure for Judge Claiborne's legal fee income for the year 1979?

A It does.

Q What is that figure?

A $45,371.93.

Q Where did you get that information from?

A From Judge Claiborne.

Q I would now show you a group of documents that have been marked as Government's Exhibit No. 30 and ask you if you would please, first to identify the types of documents that are on the left side of the exhibit folder and then tell us what's on the right side.

A The documents on the left side are work papers to prepare certain other documents used to prepare other documents.

On the right side are the documents, the document first being the application for automatic extension of the 1979 individual income tax return for Judge Claiborne.

Q Now, before you finish, if I may ask you to tell us what that form means? What is an application for automatic extension of time to file U.S. individual income tax return?

A It allows you to file your return at a later date than it is due without any penalty.

You may owe interest, but it allows you penalty-free.

Q All right. Is there a date associated with the filing of that application for automatic extension?

A April 11, 1980.

Q When would that normally need to be filed?

A April 15th, 1980.

Q Is it required that there be a response to this application?

A No.

Q What does one need to do in order to get -- in order to file an application for an automatic extension of time?

A Just simply file it. Fill it out correctly and either yourself or your representative sign it and unless it's fraudulent or some other reason, it's just automatic.

Q Is it required that there be any money accompanying it?

A You are supposed to send in money with the return, whatever is owing.

Q And how is that determined?

A You have to somehow estimate what is owed and pay it in with the application.

Q And did you make an estimation as to what was owed for that purpose around April 11th, 1980?

A Yes.

Q Could you tell us how you did that estimate and what if any documents that you used to assist yourself in making that estimate?

A Yes. We did use all the information at that time that we had from Judge Claiborne, including his salary and his Schedule C income, his business income, his interest income, and certain other deductions that he would be allowed against that income and came up with an estimated amount that he might owe.

Q And what was the amount that accompanied this application if any?

A $8,000.

Q Now, directing your attention to the second sheet on the right side of Exhibit 30, could you tell us what that is?

A This is an estimated income tax form and a check for the 1980 year, first quarter of 1980.

Q Now, were all four of these documents that appear as Government Exhibit No. 30 prepared by your office and maintained by your office in the regular course of business?

A They were.

Q Was it in the regular course of your business as a public accountant to prepare and maintain records such as these?

A Yes.

MR. SHAW: I would move the admission of No. 30, your Honor.

MR. JOHNSTON: May I just glance at them, your Honor.

No objection, your Honor.

THE COURT: Let it be admitted.

BY MR. SHAW:

Q Mr. Wright, I would now show you what appears to be a blowup of a document and ask you if this is a fair and accurate portrayal of the work paper which appears in the lower left-hand quadrant of Government's Exhibit No. 30?

A It is.

MR. SHAW: I would move for the admission of No. 30-A.

MR. JOHNSTON: Same objection, your Honor.

THE COURT: Yes. Well, I will defer on that until we get some authority.

BY MR. SHAW:

Q Mr. Wright, would you again please step down? Would you tell us what this document is and how you used it in the preparation of the extension?

A Well, you accumulate all the income that you know of and total that, and then take away expenses that you know of from that to come up with a net taxable figure and see approximately what your net tax might be in taking away certain paid-in taxes and your estimated tax that had been paid in.

Q Where did you get the information that went into this work paper that you used?

A Judge Claiborne.

Q Now, directing your attention to the -- directing your attention to the top line here, it appears to say W-2 and then has a figure. Could you tell us what that means?

A That's earnings he made as a judge.

Q And what are those earnings?

A 54,499.92.

Q And this again is a listing you are making of the income?

A Yes.

Q For 1979?

A Yes.

Q All right. Below that there appears to be a couple of lines and another figure. Could you read that for us, please?

A Yes, Page 1, Line 21, collections of principles on prior year's business, there's 46,371.93.

Q All right. What does that figure of 46,371.93 represent?

A It's a total deposit figure as listed on the document received from Judge Claiborne.

Q And that is the legal fees he earned in 1979?

A Yes.

Q Where did you get that information from?

A Judge Claiborne.

Q Now, I would show you what you have previously identified as Exhibit 28 and I will show you 28-A. Is this the letter that, by which Judge Claiborne told you that his legal fee income was $46,371.93?

A Yes, it is.

Q So as of the date that you were preparing the extension on April 11th, 1980, you were still proceeding on the basis that his legal fee income in 1979 was $46,000; is that right?

A Yes.

Q Had Mr. Claiborne or Judge Claiborne given you any different figure as of that time?

A No.

Q You may resume the stand.

Now, Mr. Wright, did there come a time that you got a figure from Mr. Claiborne as to his 1979 legal fee income, a figure that was different than that $46,000 figure?

A Yes.

Q And when would you have first gotten that figure from Judge Claiborne?

A Some time after May 22nd, 1980, and before we filed his return on June 15th, 1980.

Q Why would you have gotten that new figure from Judge Claiborne after May 22, 1980?

A That's when he gave me items from his deposit that were fees and that all the deposit was not a fee.

Q Do you have the letters that you wrote to the financial institutions in front of you, Mr. Wright?

A Yes.

Q What exhibit is that?

A 29.

Q What is the date of the last letter that you wrote to a financial institution?

A May the 22nd, 1980.

Q And what was the amount of legal fee income that you told them Judge Claiborne had received during 1979?

A $45,371.93.

Q Now, I would show you what has been marked as Government's Exhibit No. 31, and ask you if you are able to identify this group of three documents?

A Yes.

Q And what are those documents? What do they represent?

A They are documents from Judge Claiborne relating to his income and/or expenses.

Q Did you maintain these documents in your office in the usual course of business?

A Yes.

Q Whose handwriting do they appear to be in?

A Judge Claiborne's.

Q Were they used by --

A There is at least one item on the second page or two that is in my writing. Expenses.

Q What types of expenses are in your handwriting?

A March of Dimes, $25, total of donations, $525. At the bottom of Page 2 is alimony, $21,000.

Q And all the other information that is provided to you on these three pages are in Judge Claiborne's handwriting; is that correct?

A On Page 1 there are two figures and in my writing.

Q What figures are they?

A Cost of the airplane and the next loss on the sale of it.

Q Were these documents used by you in the preparation of Judge Claiborne's 1979 tax return?

A Yes.

MR. SHAW: I would move the admission of No. 31, your Honor.

MR. JOHNSTON: If I may just glance at it first, your Honor.

No objection, your Honor.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 31 was duly admitted into evidence.)

BY MR. SHAW:

Q Mr. Wright, I would show you now what has been marked as Government's Exhibit No. 31-A. It appears to be a blowup of a document. Is this a fair and accurate portrayal of Page 1 of Exhibit 31 that you just identified?

A Yes, it is.

Q Okay. Would you step down in front of the jury?

This will be brief enough, Marshal, I think we can just do this here.

This is one of the three documents that you received that is in Judge Claiborne's handwriting; is that right?

A Yes.

Q Now, under the section called earnings, is any of this information in anyone's handwriting other than Judge Claiborne's handwriting?

A No.

Q And could you read those two entries to us, please?

A Earnings with a colon, federal judge, $54,499.92. And below that, private law practice before judgeship, $22,332.97.

Q Was this information provided to you after May 22, 1980?

A Yes.

Q And some time prior to the tax return I take it; is that correct?

A Yes.

MR. SHAW: Thank you.

THE COURT: I take it you wish to offer 31-A into evidence subject to my further ruling?

MR. SHAW: Yes, your Honor.

BY MR. SHAW:

Q Mr. Wright, as of that date there are two figures that you have of Judge Claiborne, one roughly $22,000 and one roughly $46,000; is that correct?

A That is correct.

Q Did you ever make any effort to reconcile the difference between those figures?

A Yes.

Q And how did you do that?

A By asking Judge Claiborne.

Q Did you have any document that assisted you in going over those figures with Judge Claiborne?

A No.

Q Let me show you what has been marked as Government's Exhibit No. 28-A and ask you, perhaps we could do it this way?

A Yes.

Q First of all, what is 28-A?

A That's a letter from Judge Claiborne asking me to write the letters and listing his total deposits as income.

Q Now, would you step down please, again.

When you received this from Judge Claiborne as you earlier testified, none of these notes in your handwriting were there, I take it; is that correct?

A No, that's correct.

Q When you received it everything on this document was in Judge Claiborne's handwriting?

A That's correct.

Q What are these entries that are listed here in Judge Claiborne's handwriting? What do they represent?

A They represent the dates that deposits were made and the amount of deposits.

Q Okay. It does not -- does it purport to state fees at that time?

A They were all fees. He stated that was his fee income for 1972.

Q Taken from deposits?

A That's right.

Q Now, did there come a time that you placed the writings in the margin of this exhibit?

A Yes.

Q Now, could you explain these entries and where you got that information?

A Judge Claiborne gave me that information, indicating that in this deposit in February of 20,000 and $10,000 item was fees and the balance was not.

Q There are two $10,000 entries in your handwriting written next to the $20,000 deposit; is that correct?

A The balance was cashing a time certificate of $10,000 and the interest income there on that made it a total of $20,622.

Q Now, next to this $10,000 figure is written the word "fee".

A Yes.

Q Whose handwriting is the word "fee"?

A That's mine.

Q Where did you learn that that item was a fee?

A From Judge Claiborne.

Q Could you continue on your explanation.

A Okay. April 18th, $11,000 was noted as the sale of the airplane. April --

Q Where did you get that information?

A From Judge Claiborne.

Q What's the next item?

A April the 18th, $1,000 and May the 23rd, $4332.87, and that's noted as fees indicating they were both fees.

Q And the word "fees" is in your handwriting?

A Yes, it is.

Q Where did you get that information?

A From Judge Claiborne.

Q Could you have had any other way of getting that information that that item was a fee other than from Judge Claiborne?

A No.

Q What is the next item, please?

A May the 30th, a deposit of 766 was interest and August the 10th, '79, $7,000 he told me was a fee.

Q Where did you learn that this item was interest?

A From Judge Claiborne.

Q And that this item was a fee?

A From Judge Claiborne.

Q Okay.

A And on November the 20th, an item of 655.23 was interest income.

Q He told you that?

A Yes.

Q Now, were you able, from the information that Judge Claiborne gave you on this session that you had with him, were you able to determine what he was telling you to be the total fees that he received in 1979?

A Yes.

Q What did you determine to be the total fees?

A The total of those four items and they came to $22,333 in substance.

Q You totaled the four items that Judge Claiborne had told you were fees?

A Yes.

MR. SHAW: Thank you. You may retake the stand.

THE COURT: Mr. Shaw, if you are about ready to go into what happened about 1980 and so on, the calendar year 1980, I would rather defer until tomorrow morning.

MR. SHAW: I have a little more on '79, but I think this would be a good break, your Honor.

THE COURT: Well, I don't know what else you have on '79. If you have got anymore, go ahead.

/////

BY MR. SHAW:

Q You have testified, have you not, that there were a total of four items that Judge Claiborne identified to you as being income from 1979?

A That's correct.

MR. JOHNSTON: Objected to as leading and already asked and answered.

THE COURT: If he has already testified to it, then you shouldn't ask it again.

MR. SHAW: I will withdraw it.

BY MR. SHAW:

Q Did Judge Claiborne ever tell you of any other legal fee income that he had received in 1979 other than the four items that he told you about with respect to the exhibit that the jury just saw?

A No.

Q Did you ever ask him whether those four items were a complete list of all of the legal fee income that he had received?

A Yes. I asked him if there was any other income. Always a normal question.

Q What did he tell you?

A None.

Q I would show you what has been introduced into evidence as Government's Exhibit No. 3, which appears to be the 1979 tax return. Were you the tax preparer that assisted Judge Claiborne in the preparation and filing of that tax return?

A Yes.

Q And your signature as well as Judge Claiborne's signature appears on that?

A Yes.

Q Could you tell us what the total 1979 legal fee income was that was reported in the 1979 tax return?

A $22,332.87.

Q Where did you get that figure?

A From Judge Claiborne.

THE COURT: All right. I believe we will recess for the day, gentlemen. I am sure Mr. Wright is tired. I think probably everybody else is tired and if we cut two minutes off, I don't suppose the world will come to an end by reason of that.

Ladies and gentlemen, I hope the accommodations for you are entirely satisfactory. If you have any particular complaint as to the accommodations or food, please contact your marshal and we will endeavor to make you as comfortable as possible.

We realize that you are making a sacrifice and it's a great one, but it sometimes becomes necessary and I hope that you will at least enjoy yourselves and have good food at the hotel and that your rooms are comfortable and clean.

I have never been in there, but the marshal tells me that it's a very fine hotel. That's publicity for them.

Thank you very much and I will see you tomorrow morning at 9:30. You may be excused. All the others will remain seated until the jury has left.

(Whereupon the jury was excused until August 3, 1984.)

(End of previous transcript.)

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: May I ask counsel to take a look at the Federal Rules of Evidence and something on that 1001(4)? Of course, the notification of counsel to opposing counsel was required in connection with Jencks Act Material and I assume that the originals, namely, the small originals have all been presented to defense counsel?

MR. SHAW: Yes, your Honor. Several months ago.

THE COURT: My present inclination is that it is properly admissible with a cautionary instruction to the jury to tell them that the particular original document is a smaller document, but is merely for their convenience. But I don't want to, I realize that the Government has not given notice to opposing counsel that this, these particular blowups would be presented and the difficulty with that is that it puts the defense at some embarrassment because they -- had they known these blowups were coming up, the might have in turn blown up a lot of theirs and it's still not too late to do it from that angle, if it's going to be admissible at all, but take a look at the law on the subject of the Jencks Act material and the requirement for production and Rule 1001(4), I think will probably give us something on it.

MR. GOODMAN: Your Honor, I have one matter I would like to ask the court for some direction as far as my future examination is concerned.

MR. RAGGIO: Excuse me. May I be excused?

THE COURT: Yes.

MR. GOODMAN: The Court may recall that the last question I asked of Mr. James Brown, the attorney, was objected to and the Court sustained the objection.

The question was, "Did Harry Claiborne ever tell you Sid Wyman gave him $100,000?" I would submit to the Court that that is an appropriate question and that the response should have been elicited as being a statement by Judge Claiborne to Mr. Brown.

THE COURT: Did you give required notice as to Brown?

MR. GOODMAN: No, this is different than the 804(b)(5) situation because I submit that this is a statement from Judge Claiborne to Jim Brown as distinct from a statement by somebody who's not a party to the action.

THE COURT: Do you wish to present some law on the subject. I will look at it. It's not presently in accordance with Hoffman law. It may be in accordance with Goodman law and let's see what someone else says about that.

MR. GOODMAN: It may very well come in, if the

Court does think that it is hearsay and I think that's why the Court sustained the objection, it may come in under a prior consistent statement situation, if in fact the Government takes the position that the testimony by Judge Claiborne is --

THE COURT: I will be glad to consider any authorities you submit on the subject. At the present moment, I do not think that it's -- it's a self-serving statement coming from Judge Claiborne. It's not an admission against his interest, in that sense of the word. It's purely a self-serving statement.

MR. GOODMAN: Not necessarily. Well, with all due respect, not necessarily, depending on when the statement was made. If it's before they're in issue --

THE COURT: I am not asking that you write me a brief. You just give me a couple of cases.

MR. GOODMAN: I understand.

THE COURT: You don't even have to -- just give me the citations to my law clerk and that's all I need. I don't ask for my briefing on the subject.

MR. SHAW: And we would get them from the law clerk then or from Mr. Goodman.

THE COURT: Well, I think Mr. Goodman should give them to you as a matter of courtesy at the same time or prior to the time he gives them to the law clerk.

Thank you, Mr. Wright. You are excused until 9:30 tomorrow morning.

(Whereupon the proceedings concluded until August 3, 1984, at 9:30 a.m.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, SUZANNE KUES ROWE, Certified Shorthand Reporter Number 127, do hereby certify that I was present on the 2nd day of August, 1984, at the hour of 9:30 o'clock a.m. thereof, in the United States District Court, District of Nevada, Reno, Nevada, and reported the proceedings in the within-entitled cause in stenotype notes, which were thereafter transcribed by me;

That the foregoing transcript, consisting of pages 1 through 186-a, contains a full, true and complete tran-transcription of my said stenotype notes, and is a full, true and correct record of said proceedings had at said time and place.

DATED at Carson City,Nevada, this 13th day of September, 1984.

Suzanne Kues Rowe

SUZANNE KUES ROWE, CSR,RPR,CP
Nevada CSR No. 127

No. 84-1294

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-appellee

vs.

HARRY E. CLAIBORNE,

Defendant-appellant

ORIGINAL

RECORD IN FORTY-TWO VOLUMES

REPORTER'S TRANSCRIPT

IN FORTY VOLUMES

Appeal from the United States District Court for the

District of NEVADA (RENO)

CR-R-83-57-WEH

VOLUME 32

FILED DECEMBER 13, 1984

PHILLIP B. WINBERRY

Clerk of the United States Court of Appeals

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff,
vs.
HARRY E. CLAIBORNE,
Defendant.

Case No.

Reno, Nevada
August 3, 1984
9:30 o'clock, a.m.

VOLUME II
TRANSCRIPT OF TRIAL
Before HONORABLE WALTER E. HOFFMAN, and a jury.

6

APPEARANCES:

For the Government:	STEVEN A. SHAW, ESQ.
	WILLIAM C. HENDRICKS, III, ESQ.
	JAN N. LITTLE, ESQ.
For the Defendant:	OSCAR B. GOODMAN, ESQ.
	WILLIAM J. RAGGIO, ESQ.
	J. RICHARD JOHNSTON, ESQ.

CERTIFIED TO BE A TRUE COPY
CAROL C. FITZGERALD, Clerk
United States District Court
By
Deputy Clerk

REPORTED BY: SUZANNE KUES ROWE
CSR NO. 127

RENO, NEVADA, FRIDAY, AUGUST 3, 1984, 9:30 A.M.

-oOo-

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Mr. Goodman and Mr. Raggio available? And the defendant?

Good morning, gentlemen. I have a couple of preliminaries. A note from a juror inquires as follows:

"Are jurors allowed to take notes?"

In the last trial, I did permit it at their option, but told them, of course, warned them of the possibilities of, when taking notes, their attention is distracted from other testimony that might be given at the same time. That in any event, the exhibits are probably self-explanatory, but I will suggest to them that they may take notes if they care to.

This morning I received a hand-delivered, by the marshal, a letter to me. It's dated yesterday.

"Dear Judge Hoffman: On Thursday, August 2, 1983, the prosecution in what I believe to be harrassment and an attempt to intimidate me went to I.R.S. District Director, Robert Potter, with information that was untruthful, half-truth or innuendo that caused Director Potter to report incorrect information to his supervisor, Regional Commissioner Thomas Hollman, who in turn relayed this false information to my supervisor, Regional Commissioner Voskuil, V-o-s-k-u-i-l.

Regional Commissioner Voskuil thought, based on the information from the prosecutor, that I had acted illegally and improperly in my role as a witness.

I ask this Honorable Court to admonish the prosecutor for harrassing and attempting to interfere with a properly subpoenaed defense witness. If the Court cannot protect me as a witness, I ask this Honorable Court to excuse me from testifying because with this threat over me, I do not believe I could be a proper witness."

Well, number one, this is the first time, it's signed Gerald F. Swanson, Assistant Regional Commissioner, Collection, Dallas, Texas. This is the first time I knew Mr. Swanson was a potential witness. I don't know what he is going to testify to. If he is attempting to go back into the old, old ancient material that effected his grievances, I would suggest that I will not permit that.

Number two, I don't know anything about what if anything was said.

Number three, this partially brings up what I took up at the bench yesterday and I expressed my views at that time, and that's all I can say about the matter.

Is Mr. Swanson present in the courtroom?

He is not, I take it. He is a potential witness?

MR. GOODMAN: I know he's in the building. I don't know whether he's in the courtroom.

THE COURT: Well, I don't know what he's talking about.

MR. GOODMAN: I don't either, your Honor, but I think that in order for us to find out that inquiry should be made. I don't know what was said to him, but I take issue with the fact, if in fact any of our witnesses are being --

THE COURT: Well, is he a witness?

MR. GOODMAN: He is under subpoena.

THE COURT: Well, I understand that, but what do you propose to show by Mr. Swanson?

MR. GOODMAN: Your Honor, to be responsive to you, the irregularity as to how the Claiborne case was handled by the Internal Revenue Services.

THE COURT: You will not get that testimony in.

MR. GOODMAN: That may well be, but --

THE COURT: I have ruled on that not once, I think, but about three times now.

MR. GOODMAN: There are other issues as to the uniqueness.

THE COURT: But however I will let you put Mr. Swanson on the stand in the absence of the jury and I will listen to his tale of woe, but we have ruled on this before.

MR. GOODMAN: I understand that, but in order to make our record of course, we were going to at least make a proffer as the Court has permitted us to do in the past.

THE COURT: I will do that.

MR. GOODMAN: But what is bothering us, when we hear a letter of this, if in fact the prosecution did something which intimidates one of our witnesses, they shouldn't be permitted to do that.

THE COURT: I don't know whether counsel has any information, that counsel for the Government has any information that they can add to this at all. I took the matter up with counsel as to Mr. Swanson's possession of a list of the jurors which Mr. Raggio very candidly said that he had, after he received the list of jurors, he had given a copy to Mr. Swanson to ask him whether he could look over the jurors to ascertain whether he knew of any. I said that that was not improper.

Now, that's all I can tell you. Had he received the information prior to the time that Mr. Raggio received the list, then it would have been in violation of my order.

But that was the purpose of my taking it up with counsel.

MR. GOODMAN: Apparently something took place though after our bench conference because that's the first that we heard that an issue was being made about this. Somebody must have done something to put pressure on Mr. Swanson through his superiors. I know we didn't do it on this side of the room.

THE COURT: I am not going to admonish any prosecutor for harrassing and attempting to interfere. This man, Swanson, apparently thinks that anything that is said that offends his feelings constitutes harrassment.

MR. GOODMAN: Apparently it goes much deeper than that.

MR. SHAW: Your Honor, I think the record should reflect a comment that was made at that bench conference that we have been referring to. That, of course, is before the incident that Mr. Swanson refers to. Mr. Raggio at that time stated that Mr. Swanson was subpoenaed by the defense for purposes of any evidentiary, pretrial evidentiary hearing that may have occurred and obviously, there was no pretrial evidentiary hearing, so I would suggest that based upon that comment that Mr. Swanson was properly perceived by us to no longer be a defense witness.

THE COURT: Well, I don't know what Mr. Swanson knows other than thus far as far as this case is concerned, he knows nothing.

But, be that as it may, what was said and reported to him, Mr. Shaw, by whom? Any of counsel?

MR. HENDRICKS: Your Honor, yesterday I think at the luncheon break I had a conversation with the District Director and I related to him that the conversation had taken place at, before your Honor in which it had been related that Mr. Swanson had been subpoenaed, apparently the day before in anticipation of his appearance as a pretrial witness at that hearing which defense counsel had apparently anticipated had not taken place.

Further told or related to Mr. Potter, the District Director, that a question had been raised by the clerk and apparently raised with the Court as to Mr. Swanson's possession of a jury list and his activities in the Clerk's Office in connection with an apparent effort by him to identify potential witnesses.

Mr. Raggio's remarks to the effect that Mr. Swanson was assisting the defense in selecting a jury. I related those facts to him. I made no request of him and I do not know what if any action he has taken.

THE COURT: Well --

MR. RAGGIO: May it please, your Honor, I take exception to Mr. Hendricks's remarks. As to the witness, as to the potential witness, Mr. Swanson assisting us in the selection of the jury. I quite candidly, as your

Honor indicated, advised you that I had shown him the list and given him the list as I would any potential witness to ask whether or not they knew potential jurors. That was the extent of it.

There was nothing said beyond that, and your Honor, Mr. Swanson reported to me after our discussion late last night that he had been told that the prosecution had gone to his superiors and said that he was not only helping to select a jury, but aiding the defense and that he was seen in the office where the defense team is operating. That is incidently where we keep all our witnesses, so I said, "That's something you take up with your own attorney," which apparently he had done. I have nothing to do, nor do any of us, with the --

THE COURT: I don't know whether he's taken it up with his own attorney. This is not from an attorney. It's just on a blank sheet of paper, but in any event, I will answer it by saying that I am not admonishing anyone, nor am I excusing Mr. Swanson as a potential witness, because I don't know what he, precisely what he's going to testify to, although I would suggest that he will not be permitted to testify, if his, if he desires to go back into the old story of the Lemberez case and so on. If that is the story, why I have heard enough of that and I have ruled on it, not once, but about three times, I think, now.

All right. The next item I have received this morning, but I have not even read it, the Government's memorandum regarding the so-called blowups. Have you gentlemen had a chance to look at it?

MR. JOHNSTON: Yes, your Honor, we have decided to accept the Court's suggestion that we may want to introduce some blowups ourselves. We therefore withdraw our objection to the introduction of the evidence of these blowups.

THE COURT: All right. That's fine.

All right. Call the jury, Mr. Marshal.

(Whereupon the following testimony of Mr. Wright has been previously transcribed.)

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RENO, NEVADA, FRIDAY, AUGUST 3, 1984, 9:30 A.M.

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(The following proceedings were held in open court before the jury.)

THE COURT: Good morning, ladies and gentlemen. May I answer first the note from one of you which reads: "Are jurors allowed to take notes?"

Yes, you may if you decide to take notes, you may take notes.

In that connection, I want to warn you, however, that sometimes when you're taking notes as I have to do for my own benefit, you are sometimes distracted from hearing what the testimony or the continued testimony of a witness may be. And I call that to your attention only for that purpose.

Likewise, a juror's notes do not constitute any official record, of course. They are solely for the juror's benefit, and not for the whole jury. It's for your individual benefit. You can't go back in the jury room and read to your fellow eleven jurors and say, well these, the notes say so and so and I wrote it down and things like that because it's the independent recollection of each of the jurors that is controlling.

With that statement, I think I have answered it. If any of you care to make notes then I will provide you with whatever may be necessary to make those notes. There are, of course, a mass of figures that have been introduced on yesterday and will be another mass of figures from now on, but they are all shown in the exhibits and are not drawn out of thin air, at least I don't think, but very few of them are from the witness's independent recollection.

Likewise, may I say, members of the jury, that yesterday there were certain blowups that were presented by the Government and I deferred action on those. They were Exhibits 25-A, 28-A, 30-A and 31-A. They are the big blowups you had. Defense counsel has indicated that they wish to withdraw any objections with the understanding that they would have the same right to present blowups when their case is presented and if it is a blowup of a particular exhibit, that will be admitted at the proper time under the same conditions. These exhibits may now be considered as evidence by you.

We had Mr. Wright on the stand, I believe, and he may resume the stand.

JOSEPH C. WRIGHT, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (Resumed)

BY MR. SHAW:

Q Would you give us your full name again, please?

A Joseph C. Wright.

Q You are the person who assisted Mr. Claiborne, Judge Claiborne in the preparation of his 1979 tax return; is that correct?

A I am.

Q And we were discussing the preparation of that 1979 return yesterday?

A Yes.

Q Now, during the period of time in early 1980 when you were working on the 1979 return, before I get to that question, let me show you what has been marked as Government's Exhibit No. 6, which appears to be a number of checks from Mr. James Brown to Harry E. Claiborne. I would also show you Government's Exhibit No. 28 which is the letter to you from Judge Claiborne.

I am showing the jury Exhibit 28-A which is the enlargement of the exhibit you are referring to at the witness stand.

Now, using Exhibit 28, if necessary, are you able to, by looking at the exhibits in Government's Exhibit No. 6, are you able to say whether the check in Government's Exhibit No. 6, which is dated January 5, 1979, in the amount of $3,381.10 was told to you by Judge Claiborne or anyone else in the preparation of the '79 return? Were you advised of that check?

A No.

Q Directing your attention to the check from James Brown to Harry E. Claiborne dated January 26, 1979, in the amount of $833.33, do you see that check?

A Yes.

Q Were you told of that income or that check in the preparation of the 1979 return?

A No.

Q Directing your attention to the check dated February 15th, 1979, in the amount of $1,106.66, were you advised of that check in the course of your preparation of the 1979 return of Judge Claiborne?

A No.

Q Directing your attention to the check dated August 3rd, 1979, in the amount of $1,905.90, did Judge Claiborne or anyone else advise you that he had received that check in the course of your preparation of the '79 tax return?

A No.

Q And finally directing your attention to the check dated November 13, 1979, in the amount of $250, did Judge Claiborne or anyone else advise you that he had received that check during the course of your preparation of Judge Claiborne's '79 tax return?

A No.

Q Were any of those checks reported by Judge Claiborne on his 1979 taxes?

A No.

Q Now, are you able to tell -- strike that.

What if, if in any way, did you use Exhibit No. 28 to assist you in the action to those questions?

A The dates of deposits and the amounts.

Q Of Exhibit 28?

A Yes.

Q What does Exhibit 28 show you in that regard?

A It shows me items that Mr. Claiborne identified as income that I was to use on his 1979 return.

Q Now, did any of the checks that I have just read to you or identified for you from Mr. Brown, did any of those checks appear on the listing on Exhibit No. 28 that's in Judge Claiborne's handwriting?

A No.

Q Now, I would show you what's been marked as Government's Exhibit No. 9, what appears to be five cashier's checks to Harry Claiborne from Annette Quintana.

Directing your attention first to the check which is dated January 16th, 1979 in the amount of $1,000, did Judge Claiborne or anyone else tell you that he had received that income in 1979?

A No.

Q Directing your attention to the check dated February 12th, 1979, also in the amount of $1,000, did Judge Claiborne or anyone else tell you that Judge Claiborne had received that income in 1979?

A No.

Q Directing your attention to the $1,000 check dated March 9th, 1979, did Judge Claiborne or anyone else ever tell you that he had received that income in 1979?

A No.

Q And finally directing your attention to the $1,000 check dated May 14, 1979, did Judge Claiborne or anyone else at any time tell you that he had received that fee income in 1979?

A No.

Q Did Judge Claiborne report any of those four $1,000 checks on his 1979 income tax return?

A No.

Q Do any of those four $1,000 checks from Annette Quintana to Judge Claiborne appear on the list of fees that Judge Claiborne gave you which is Exhibit No. 28?

A No.

Q Now, did you have any part in the preparation or filing of Judge Claiborne's 1979 ethics and government financial filing that he has to make annually with the Judicial Ethics Committee?

A No.

Q Did you, in the spring or summer of 1980, were you aware that he was making such a filing?

A No.

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Well, I will permit it if he knows.

THE WITNESS: I did not.

BY MR. SHAW:

Q Did he ever ask you to assist him in the preparation of that filing?

A No.

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Overruled.

BY MR. SHAW:

Q Your answer is no, that he did not ask you to assist him in that; is that correct?

A That's correct.

Q Directing your attention again to Exhibit 28, if you would, is there an entry on Exhibit No. 28 showing any information with respect to 1980?

A Yes.

Q And what is that information?

A There was a deposit on January 16, 1980, in the amount of $41,000 that Judge Claiborne told me was a fee.

Q Is that the entry on the very bottom of Exhibit No. 28?

A Yes, it is.

Q Is that in Judge Claiborne's handwriting?

A Yes.

Q How about the word "fee"?

A That's my writing.

Q Where did you get the information that enabled you to write the fee -- the word "fee" next to that $41,000 entry?

A From Judge Claiborne.

Q Now, in 1980 when you made that entry of fee next to the $41,000 which is Judge Claiborne's handwriting, what was your understanding as to the tax consequences, if any of that $41,000 fee for the 1980 year?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Are we talking about the 1980 calendar return or the 1979 calendar return?

MR. SHAW: The question went to what his understanding would be had he prepared the 1980 return?

THE COURT: Had he prepared it?

MR. SHAW: All right. I will permit it.

THE WITNESS: It would have been fee income.

BY MR. SHAW:

Q Did there come a time that you started the process in preparing his 1980 return?

A Yes.

Q Approximately when was that?

A Some time in the latter part of March or first part of April.

Q Of 1981?

A Of 1981.

Q Could you tell us generally what you did in the course of beginning your preparation of his 1980 return?

A Would call his secretary, Judy, and ask her to tell the Judge we needed to get started on his return and to have him call me so we could get together and do that.

Q Why did you need to get together with Judge Claiborne to start the preparation of his 1980 return?

A I had no information other than this one item in order to prepare the return. That's the only item I had relative to 1980 to prepare the return with.

Q So you left a message with his secretary, Judy, for him to call you?

A Yes.

Q Did he call you?

A No.

Q What did you do then?

A Subsequently I called him several times.

Q How many times did you call him altogether?

A Probably five or six times.

Q This is all in the spring of 1981?

A Yes.

Q Who did you leave messages with for him to call you?

A His secretary, Judy, and I think a couple times his law clerk.

Q Did you ever receive any return phone calls from Judge Claiborne?

A No.

Q Did you prepare his 1980 return?

A No.

Q As of the time that you were making those phone calls, in an effort to meet with Judge Claiborne, did you still consider yourself his accountant?

A Yes.

Q From what period of time had you been his accountant?

A Over thirty years.

Q Did he ever in any way explain to you why he did not return your phone calls?

A No.

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Well, I will permit it.

BY MR. SHAW:

Q Your answer is no, that he never explained that to you?

A That's right.

THE COURT: I will tell the jury, however, that there was no legal obligation on Judge Claiborne to respond to any phone call in that respect.

MR. SHAW: Thank you.

/////

BY MR. SHAW:

Q During the, say, last ten years that you were acting as his accountant and tax preparer, what fee did you charge Judge Claiborne?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: What is the relevancy of this?

MR. SHAW: Your Honor, we will have later evidence showing the fee that was charged by Mr. Watson and we would like to show the disparity.

THE COURT: What has that got to do -- I understand that might be admissible when you get to Mr. Watson, but what is the difference of comparing fees by tax preparers?

MR. JOHNSTON: If the Court please, if there is going to be extended discussion on this, I would like to have it outside the presence of the jury.

THE COURT: I am prepared to sustain the objection as being irrelevant.

MR. SHAW: May I argue outside the jury.

THE COURT: You may argue before you finish with this witness, but let's go on. In the meantime, the objection is sustained.

MR. SHAW: That is the last question, your Honor.

THE COURT: Well, if that's the last question, members of the jury, take your usual walk then.

(The following proceedings were held in open court outside the presence of the jury.)

THE COURT: Mr. Shaw, as I recall the testimony from the last case, actually Judge Claiborne paid Mr. Wright about $50 a month or $600 a year which included his general bookkeeping services and apparently also included the preparation of his tax returns and I recall the $2,000 figure that Watson charged, and without commenting upon the ability or lack of ability of Mr. Watson, what has this got to do with this?

MR. SHAW: Your Honor, the critical point is whether Judge Claiborne reasonably and in good faith relied upon what Mr. Watson told him with regard to the 1980 return. Now, part of the impression that Judge Claiborne would have when speaking with Mr. Watson would be the size of the fee that was being charged. Now, the jury would have no way of knowing that that was a high fee or was higher than what he had been paying for thirty years if they don't see the comparison between the two tax preparers. That's probative. There is--in other words, a $2,000 fee is probative of the fact that Judge Claiborne knew he was buying himself a defense to a criminal charge.

THE COURT: Well, the return that Mr. Watson filed wasn't worth $20 much less $2,000.

MR. SHAW: That's right, and with a $2,000 fee, Judge Claiborne would have looked carefully at the return.

THE COURT: You may bring that out on cross-examination of Judge Claiborne, if he testifies, but this witness, who apparently did perform valid services to the defendant over a period of years, he may have been underpaid. I take it his charges were paid, whatever they were.

MR. SHAW: But part of the importance of this is why, I mean the jury is going to be determining why it is that after thirty years a different accountant was retained. Now, they may consider that maybe a different accountant was retained because Mr. Wright was charging him too much money. For all they know, they are going to speculate that he was charging them $4,000 and Judge Claiborne went to Mr. Watson to save money and of course, that's not the case.

THE COURT: You may bring that out in cross-examination of Judge Claiborne if necessary why Mr. Wright can be recalled as to, if Judge says, well, Mr. Wright was charging me too much or anything like that, why then I agree that it's very pertinent.

MR. SHAW: Well, Judge Claiborne may not testify, your Honor.

THE COURT: Judge Claiborne will be testifying, I think.

MR. SHAW: You are privy to more information than we are, your Honor.

MR. JOHNSTON: I would like to suggest that any suggestion that that 1980 return which was prepared by Mr. Watson constitutes some kind of defense against a criminal charge, is too ridiculous to require further comment. He wasn't buying any kind of a defense against a criminal charge.

THE COURT: I don't think it's admissible anymore than if Mr. Wright were shown the 1980 return and then asked to comment upon it. I mean I take it others perhaps may comment upon it, but you are asking him in effect to evaluate his services against Watson's services. I have no criticism of the charges that Mr. Wright may have made. I think they were very, very reasonable, but I don't see the relevancy at this time.

MR. JOHNSTON: Your Honor, one other matter in the absence of the jury. It's my understanding yesterday that the prosecution would prepare and provide us with a legible copy of Exhibit 28, which we have two copies of, both of which are totally inadequate. I wonder if that's been done.

THE COURT: Yes, I can't keep track of who prepares what and when. Was a copy prepared? Somebody said you would give it to them at lunchtime, I believe.

MR. SHAW: I misunderstood. I assumed that Mr. Johnston was asking for time to copy the Clerk's official exhibit. I don't know whether the official exhibit --

THE COURT: Well, send it by my law clerk and tell him to make it now, Mr. Johnston. Give it to him, will you please?

MR. JOHNSTON: I don't have anything for him, your Honor, it's up on the witness stand.

THE COURT: You need a nursemaid. Judges can't be nursemaids.

MR. JOHNSTON: I am sorry, your Honor. I simply want Counsel to do what they said they would do. There was no question about it at the time. They said they would do it during the recess.

MR. SHAW: Your Honor, I would have one more question of Mr. Wright before the jury that would not be the amount of his fee.

THE COURT: With the jury?

MR. SHAW: Yes.

THE COURT: All right. Call the jury.

(The following proceedings were held in open court before the jury.)

THE COURT: All right, Mr. Shaw.

MR. SHAW: Thank you, your Honor.

/////

BY MR. SHAW:

Q Mr. Wright, in the spring of 1981, were you in any way too busy to do the tax preparation work for Judge Claiborne for 1980?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Overruled.

THE WITNESS: No, I was not.

BY MR. SHAW:

Q Did you ever indicate that in any way to Judge Claiborne that you felt that you were too busy to do his 1980 return?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: Overruled.

THE WITNESS: No.

MR. SHAW: Thank you.

THE COURT: Cross-examine?

MR. JOHNSTON: Yes, your Honor. Thank you.

THE COURT: You now have a legible copy of that exhibit.

MR. JOHNSTON: I would like the record to show that I have a legible copy, your Honor, and I thank the Court for providing it.

CROSS-EXAMINATION

BY MR. JOHNSTON:

Q Mr. Wright, would you tell us again how long you have lived in Las Vegas?

A Since 1942.

Q How long have you been in practice as a public accountant in Las Vegas?

A 1949.

Q 1949?

A Yes.

Q Now, in 1949, were you licensed by the State of Nevada as a public accountant?

A No. We had no licensing at that time.

Q Am I to understand then all you had to do is hang out a shingle in effect and hold yourself out as a public accountant?

A Yes.

Q Have you since been licensed by the State?

A Yes.

Q What were the requirements -- first of all, tell me when you were licensed?

A I don't recall. Sometime in the early '50's, I think, when the State passed its licensing law.

Q I see. And what did you have to do at that time in order to obtain a license as a public accountant?

A We just all registered. Everybody in public accounting registered with the State.

Q Was there any requirement at all as to who could register and get a license?

A I don't recall particularly. I think you may have had to be in practice for a certain period of time.

Q I see. Does the State of Nevada still license accountants as public accountants?

A Yes. In some instances.

Q Are the requirements different now from what they were then?

A It was a phase-in period. Over about three or five years, something like that. Since that phase-in period, we have had what you call closed-in legislation and only in rare instances is a public accountant registered.

Q I see. But you didn't have to take any kind of an examination in order to get your license?

A Nobody did.

Q And you never have?

A No.

Q Will you tell us what the difference is then in the requirements to practice as a public accountant and on the one hand or to practice as a certified public accountant on the other hand?

A The practice of accounting in Nevada is not limited to CPAs or PA's. I assume you are asking what you have to do to be a CPA?

Q That's right. You are not a CPA?

A That's right.

Q What would you have to do to be licensed as a certified public accountant?

A Sit and pass the examination.

Q And is that a rather extensive examination?

A Two and a half days.

Q Two and a half days. Are you familiar with the parts of the examination, the different areas that are covered?

A No.

Q You have never applied to take the examination; is that correct?

A That's right.

Q All right, sir. How long have you known Judge Claiborne?

A Since 1943.

Q How did you first meet him?

A He was in the legal section at Nellis Air Force Base or then McCarren Field and I was a pilot there.

Q Were you a pilot?

A Yes.

Q Did you become friends at that time?

A Not particularly, although I knew him.

Q Would it be fair to say you were acquaintances?

A Yes.

Q Did you then begin to practice accounting in Las Vegas before he bagan to practice as a lawyer?

A It was about the same time. However, I think he was in practice before I was.

Q All right. And did you begin to prepare his tax returns shortly after you had started to practice accounting in Las Vegas?

A Yes.

Q And you have prepared them ever since up through the year 1979; is that right?

A That is correct.

Q I want to make sure I understand the procedure that you followed in preparing Judge Claiborne's returns. It's my understanding from your testimony that you received from the bank the Judge's bank statements and cancelled checks; is that correct?

A That is right.

Q And then you received certain records from his office; is that right?

A That's right.

Q What records did you get from his office?

A Check stubs, receipts, fee receipts and other deposits had they not been fees like interest income or dividends and certain documents relative to equipment purchases, credit card statements with individual charges so that we could get his travel expenses and other items that might be deductible expenses on his return.

Q Will you tell us what the receipts were, what were they receipts for?

A Fee income.

Q Was it the practice --

A Mainly.

Q I am sorry.

A There were some interest receipts and dividend receipts.

Q Was it the practice in his office for someone to make out a receipt each time a fee was paid to the office?

A I understand it was.

Q I am merely asking about your understanding.

A Yes. However, just very short periods of time were we given a complete numerical copy of the receipts, but I understand it was his practice to make a receipt and put it in the client's file over all these years, but I did not receive a copy of all of those over all of these years.

Q I am not sure I understand. Did someone make a list of receipts and give it to you?

A No.

Q Did you make a list?

A They sent me -- yes. They sent me copies of the receipts and I listed them in the journal.

Q All right. What you received were carbon copies, were they?

A That is right.

Q Were they in a book of receipts?

A No, they were torn out of a book and sent to me.

Q And they were separate pieces of paper then, these carbon copies?

A Well, as I recall, there may have been three or five receipts to a page and they would tear an entire page out and send them to me.

Q So they were originally in a book with several receipts on each page and the pages were torn out of the book and those were carbon copies of the originals, weren't they?

A Yes.

Q And that was what was sent to your office?

A Yes.

Q Were those receipts serially numbered?

A Yes.

Q You can tell whether any of them were missing from the series by the numbers?

A Yes.

Q And if you had a gap, if there was a number that appeared to be missing, would you then ask about that?

A I would imagine I did, although I don't have a specific recollection of that.

Q You don't recall that ever happening?

A No.

Q So far as you can remember, the receipts were always complete and intact, you had complete pages?

A Well, first of all, I got this for a very short period of time and not any one complete year.

Q Perhaps I didn't understand that. During what period of time did you get copies of the receipts?

A '79 and the most complete year -- excuse me, 78.

Q That wasn't the practice prior to '78?

A No.

Q What did you work with in preparing the returns before 1978?

A His deposits. His deposits were treated as income unless he otherwise told me.

Q That was his instruction to you, I take it?

A That is right.

Q But you -- did you have any records from his office when you were working on the return prior to 1979?

A His deposits, yes. His deposits were treated as income unless he identified them as something else.

Q But the deposits were in the bank statements, weren't they?

A Yes.

Q And the bank statements came to you from the bank, did they not?

A Yes.

Q My question is prior to 1978 in addition to getting the bank statements and the cancelled checks from the bank, they were sent to you directly, were they not?

A The bank statements were.

Q Yes. From the bank?

A Yes.

Q And that included the cancelled checks, did they not?

A That is right.

Q Did you get anything in addition to that from Judge Claiborne's office?

A Yes.

Q What did you get?

A His check stubs and some receipts.

Q I am asking you prior to 19 --

MR. SHAW: Objection, your Honor. He obviously was giving a list. He is being interrupted.

MR. JOHNSTON: I am sorry. I didn't mean to interrupt Mr. Wright.

THE COURT: Had you finished, Mr. Wright?

BY MR. JOHNSTON:

Q Tell us again what you got from his office?

A His check stubs and some receipts, documentation as to expenses of various kinds. Mainly that was it. We used his deposits basically as his income.

Q But were you getting these records from his office before 1978?

A Yes.

Q So you were getting receipts from the office before 1978?

A Records include things other than receipts now.

Q Let's just talk about receipts, first of all.

A Okay.

Q I understood you a moment ago to say that you only began to get the receipts in 1978? I want to be sure that I am clear on what your testimony is.

A Okay. That was the most complete year. We tried to get secretaries to do this properly over the years. For short periods of time, we would be successful and then it would cease.

The biggest or longest period of time that we consistently got receipts was in '78.

Q How long before that had you been getting incomplete sets of receipts?

A Thirty years.

Q For the whole time?

A Yes.

Q All right. So would it be fair to say then that you wanted to get copies of the receipts, but that the secretaries in the office didn't always provide you with complete sets.

A That is true.

Q Is that a fair statement?

A That is true.

Q All right. Now, basically you -- please help yourself there, Mr. Wright.

I have the same need occasionally.

(Whereupon counsel and witness took drinks of water.)

THE WITNESS: Okay.

BY MR. JOHNSTON:

Q If you were preparing Judge Claiborne's tax returns and specifically his computing his income from fees, on the basis of bank deposits that were shown in bank statements; is that right?

A Yes.

Q Then there never was a time when anybody told you about specific checks that were received as income, was there?

A No.

Q That wasn't the system, was it?

A That's right.

Q So that when Mr. Shaw asked you about these checks that were issued by James Brown in 1979, and four of the five Quintana checks that were received in 1979, there is nothing unusual about your not having been told about those as specific checks, was there?

A In '79 we wasn't getting that type of record. That became a different procedure in '79. He was on the bench at that time, and I wasn't getting anything from his secretaries in '79.

Q But there never was a time when you were getting lists of checks, was there?

A From clients?

Q Client checks?

A No.

Q Nobody ever provided you with a list of specific checks by date and amount and name of client, did they?

A No.

Q So there wasn't anything unusual in 1969, in that year you still were not provided with specific information about the checks from Mr. Brown or from Miss Quintana; isn't that right?

MR. SHAW: Objection. I believe Mr. Johnston inadvertently said 1969 and I want Mr. Wright to be clear on that.

MR. JOHNSTON: If I did, I am happy to be corrected because I meant '79, your Honor.

THE COURT: I thought he said 1979. For the 1979 calendar year return.

MR. JOHNSTON: That's what we are talking about anyway. If I referred to '69, I didn't mean to.

BY MR. JOHNSTON:

Q Now, working with this system that you have, you take the bank statements and you go down the deposits, right?

A (Nods head affirmatively.)

Q Did you try to match those deposits up with copies of the receipts?

A As I recall, the receipts totaled a deposit for this year of '78 which was the only year that you could even begin to assemble that type of double-check.

Q You mean that the only receipts that you saw were all encompassed within a single bank deposit? You said they totaled a deposit?

A You might have three deposits that would total $3,000 and you would see a deposit then for $3,000.

Q You mean the checks?

A Yes. Receipts, yes.

Q All right, sir, but you had more than three receipts?

A Yes. And more than one deposit.

Q I am not sure I understand the answer. Did you attempt to match up receipts that you got from the office with deposits that were shown on the bank statements?

A My secretary did, yes.

Q And was that successful to any considerable extent?

A Just for an incomplete year of 1978.

Q Although that year --

THE COURT: I thought we were talking about the '79 return.

MR. JOHNSTON: I am talking generally, your Honor, at this point about the practice. I am trying to understand and be clear in my own mind as to how the system worked. I will get more specific in a moment.

BY MR. JOHNSTON:

Q Working with this system, Mr. Wright, it was inevitable, wasn't it, that some bank deposits were treated by you as fee income, although you later discovered that they weren't actually fees?

A That is true.

Q Is that a fair statement?

A Yes.

Q And there was one such instance in 1979, was there not, in connection with the 1979 return? Do you recall that?

A I'm not sure you are talking about '79 or '78.

Q Would you look at, if you have Exhibit 28 up there, please, Government's Exhibit 28?

A Yes.

MR. JOHNSTON: Your Honor, could I at this point inquire through the Court whether the jurors can all see these things if they are simply propped up here or we need to get the tripod there.

THE COURT: There is an easel over there if you would prefer to have it.

MR. JOHNSTON: I think it may be easier for them to see, Judge.

I thought perhaps you could ask them.

THE COURT: I'm not sitting in their laps, for which I am sure they are grateful.

MR. JOHNSTON: I am going to ask Mr. Wright to work from the exhibit itself, which he has. This isn't the right one. I am sorry. I'll get it right sooner or later.

BY MR. JOHNSTON:

Q Would you look at Exhibit 28, Mr. Wright, and the jurors can follow if they wish on this blowup which is 28-A and let me ask you whether there is one deposit in here dated 5/23/79. Do you find that?

A Yes.

Q What's the amount of that deposit?

A $4,332.87.

Q That is not very clear on the blowup. Isn't it a fact, Mr. Wright, that you later learned that that deposit did not constitute a fee?

A I have been told that since this trial started.

Q It was in fact three nontaxable items, was it not?

MR. SHAW: Objection, your Honor. I don't think he should have him testify to what he has heard since the trial has begun.

MR. JOHNSTON: The question is what he knows.

THE COURT: Well, I don't know what he knows now. He has been told that they were not income, but I don't know when he was told and by whom.

MR. SHAW: I believe he testified, your Honor, that it was after the investigation began that he was told that.

THE COURT: After the investigation.

MR. SHAW: So it's not relevant, and it's hearsay.

THE COURT: I will sustain the objection.

BY MR. JOHNSTON:

Q You don't know of your own knowledge whether that deposit was a fee or not?

A Just what Mr. Claiborne told me when we were preparing the return.

Q Mr. Wright, I am going to hand you Government's Exhibit 18. I ask you to look at that please, and ask you whether you find, first of all, will you tell us what that exhibit is?

A On the left-hand side is a Pioneer Citizens Bank statement of Harry E. Claiborne's for the period ending June 6, '79.

Q Do you find on that bank statement a deposit that was made on May 23, 1979?

A Yes.

Q And what is the amount of that deposit?

A $4,332.87.

Q And that's the same item that's included on this Exhibit 28, is it not?

A That is right.

Q All right. Opposite the bank statement, do you find pictures of some checks?

A Yes.

Q And isn't it a fact that those three checks make up that deposit, the total of the three checks equals the deposit? I brought with me a little pocket calculator. I will make it available to you. Do you need this, Mr. Wright?

A No.

Q All right, sir. Would you tell us what those three checks are?

A I don't know what they are, but they total $4,332.87.

Q May I see the exhibit, please.

MR. JOHNSTON: May I stand by the witness, your Honor, while I ask him this?

THE COURT: No.

MR. JOHNSTON: May I then read into the record what the three checks are, your Honor?

THE COURT: Yes. The exhibit's in evidence, isn't it?

MR. JOHNSTON: Yes, your Honor.

THE COURT: Yes.

MR. JOHNSTON: The first check is a check dated April 25, 1979, payable to Mr. Claiborne -- Judge -- Mr. Claiborne. I am sorry. Judge Claiborne from W. W. Galloway, tax receiver, in the amount of $60.

BY MR. JOHNSTON:

Q Would you understand that was a legal fee, Mr. Wright?

A No.

Q The next check is a United States Treasury check dated May 11, 1979, payable to Harry E. Claiborne in the amount of $1,272. That's not a legal fee, is it?

MR. SHAW: I would object, your Honor. He already testified he has no knowledge of this transaction other than what has been told after this case started.

THE COURT: You may ask it.

BY MR. JOHNSTON:

Q The third check is another U.S. Treasury check dated May 11, 1979, payable to Judge Claiborne in the amount of $3,000.87. That's not a fee, is it?

A I don't know.

Q Is it your thought that the U.S. Treasury Department may be paying a fee to Judge Claiborne?

A Possible, I suppose. I don't know where he gets all of his fees from.

Q You thought perhaps he was doing legal work for the government after he was on the bench?

A I didn't have this when I prepared his return.

Q No, sir. I understand that. My only point is that that particular deposit didn't represent fee income, did it?

A He told me it did.

Q It didn't represent fee income, did it, Mr. Wright?

A I don't know.

Q You still don't know?

A That is right.

Q Even after looking at that exhibit, you don't know?

MR. SHAW: Objection, your Honor. What he knows today about this is totally irrelevant.

THE COURT: Let's not argue about it. He's answered it.

BY MR. JOHNSTON:

Q As a result of using this method of determining Judge Claiborne's fee income, there were mistakes made in other years, weren't there, where nonincome items that were deposited in the bank were picked up and treated by you as fees because you didn't have any better information?

MR. SHAW: Objection, your Honor, as to other years, other than what we are talking about.

THE COURT: Sustain the objection as to that.

MR. JOHNSTON: Is it your Honor's ruling that I can't ask him about such items in a prior year?

THE COURT: About what?

MR. JOHNSTON: About such items that were in --

THE COURT: For 1978? If you want to open the door, yes.

MR. JOHNSTON: No, sir, I think not. All I am talking about is the system, the way the system worked and the deficiencies. That's the only purpose.

THE COURT: You have asked about that. I understood him to say that prior to 1978 he did not receive all of the receipts, but in '78 he received the most complete of the three receipts.

MR. JOHNSTON: With the Court, this is a little different.

MR. SHAW: May Mr. Johnston argue this outside the jury.

MR. JOHNSTON: I am in agreement with that, your Honor.

THE COURT: All right, members of the jury, take that usual walk. In the meantime, I will give you a midmorning recess.

(The following proceedings were held in open court outside the presence of the jury.)

THE COURT: All right, Mr. Johnston.

MR. JOHNSTON: May I make an offer of proof, or do you wish me to question Mr. Wright?

THE COURT: Yes. Maybe the question is admissible. I don't know. I have forgotten what you asked now.

MR. JOHNSTON: All right, your Honor.

BY MR. JOHNSTON:

Q Mr. Wright, isn't it a fact that when you prepared the 1978 return, there were several bank deposits which you assumed were fee income and which you included in the fee income which actually did not represent fees?

A I included some deposits as fee income because that was our procedure, whether that was income or not, I don't know.

Q Let me ask you specifically. Do you recall or was a deposit of $5,080.05, which you treated as fee income?

A I am sorry. I can't recall all the items that was on that return.

Q I am not asking you to recall all the items. Just this one bank deposit. The $5,080.05. Don't you recall that you later learned that that deposit included one of Judge Claiborne's salary checks for $3,080.05?

A I have been told a lot of things and specifically that one item as to whether it included in the salary, I don't know. I have been told that some deposits that we treated as income, that he told me was income later proved to be something else.

Q Do you remember testifying on this subject at the prior trial, Mr. Wright?

A I remember talking to the prosecution and the defense in my office about all these things and in the trial. Now, when and where I learned of any one item, I would really hesitate to say now because I'm not all that sure.

Q I am not asking you now when and where you learned of an item. I am just asking for your recollection. Let me try you with another one.

Don't you remember that in preparing the 1978 return, you treated as fee income a deposit of $5,500 which you later learned was part of the purchase price of Judge Claiborne's law library. Do you remember that?

A I believe that is right.

Q That wasn't fee income, was it?

THE COURT: Now that you may bring out.

MR. JOHNSTON: I have two or three other examples.

THE COURT: He's testified to that previously.

MR. SHAW: We would ask your Honor to keep an open mind pending the argument on that issue. It's also an item that he subsequently learned.

THE COURT: Well, it was brought out at the last trial, wasn't it?

MR. JOHNSTON: These were all brought out at the last trial.

MR. SHAW: I wouldn't think we would be estopped from arguing an improper questioning based upon the fact it was brought out at the last trial. If he learned something yesterday, how can he testify to that?

THE COURT: Mr. Shaw, even a certified public accountant is not perfect. They make errors too. There is no harm for a person like Mr. Wright to admit that he is a man that can make errors. I have seen the IRS agents make errors.

MR. SHAW: Your Honor, the point is though he has no way of knowing that it's an error.

THE COURT: Well, then they may ask him whether or not it is correct and if he has previously testified that he did make an error, then he should testify again that he made an error.

MR. SHAW: He said apparently there was an error made. Not that he made it. There was an error made because of subsequently learned information that he was told by the defense and the prosecution.

THE COURT: If he knows it, he did make an error, didn't he?

MR. SHAW: Well, it's the error of what the defendant told him. If he was told it --

THE COURT: I have even known of judges making mistakes from time to time. Of course, if they added up all my mistakes in this trial, why Mr. Goodman would have a catalogue a yard thick.

MR. SHAW: I think it's improper to prove that he thinks that it was a mistake.

THE COURT: I don't think it makes a bit of difference, but I think it does show some basis perhaps of what he did in the preparation of his '79 return. If he made prior errors in the return, what's wrong with bringing it out?

MR. SHAW: It's improper to prove through this witness as hearsay what he learned from the defense in the recent weeks or months that something was a mistake.

THE COURT: I made you produce it way back.

MR. SHAW: That's right. My point is his conclusion from information he subsequently learned is an improper way to show it. It's hearsay from what he has been told by the prosecution.

THE COURT: He has answered "I have learned."

MR. SHAW: After the investigation began. How can that be relevant?

THE COURT: It's still an error that he committed and I am not saying he was responsible. Judge Claiborne was equally responsible in all probability, but it's still an error he committed.

MR. SHAW: He doesn't know it was an error other than through hearsay he has been told by all of this since it began.

THE COURT: I think Mr. Wright's reasonable competency may be explored into as a basis for whether or not he did in fact report all of the income items for the 1979 return.

MS LITTLE: Your Honor, the Government would also add that in a memorandum we submitted previously, any errors that he may have made in one year, it's a classic example 404(b) problem. That is, he is not an expert; he is a fact witness.

THE COURT: Well, just let him admit that he could make errors and if he is so perfect that he has never made an error on any tax return, he ought to be the top man in the country.

MS LITTLE: It's our position that Rule 404(b) would prohibit that kind of testimony. Specific acts in one context tending to prove that he acted in conformity with those acts in another.

MR. JOHNSTON: That's not the purpose of this at all, your Honor.

MS LITTLE: I think it is, your Honor.

MR. JOHNSTON: Excuse me. The memorandum that the Government filed assumed that we might ask this kind of question by way of impeaching Mr. Wright. That's not the purpose of the question. The purpose of the question is to show that the system itself had deficiencies which resulted in reporting as income items that did not constitute income.

THE COURT: Well, he's already admitted that that could happen.

MR. JOHNSTON: That is right. I want to take him through these specific examples.

THE COURT: Well, he has admitted that that has happened. I have tried to protect -- the Government wants to put in the 1978 tax return. I have stopped them. They wanted to put in the 1977 tax return. I have stopped that. Now, you want to go into specific items. This gentleman is testifying without these returns that he prepared and it's not fair to question him without the benefit of these returns that he should have in front of him.

If he admits that he has made errors, which he admits that he has been told made errors, why go further into it.

MR. JOHNSTON: I won't pursue the matter further.

THE COURT: I am trying to protect the '78 return and the '77 return and you are opening the door wide.

MR. JOHNSTON: I don't want to do this at the expense of getting the '78 return into evidence. I want to make that very clear.

THE COURT: That's your funeral then. You can elect to be buried now and go on into it.

MR. JOHNSTON: I would rather defer the date of my demise, your Honor.

THE COURT: Suppose you defer the specific items question.

MR. JOHNSTON: May I, when the jury returns, may I just ask him one sundry question on this, that he did treat as income items that were not actually income just to conclude the matter?

THE COURT: And he is going to say that "I have been told that I did."

MR. JOHNSTON: Whatever he says.

THE COURT: What is your answer?

THE WITNESS: That's my answer. I have been told that I did.

MR. JOHNSTON: I would then ask him by whom were you told, Mr. Wright?

THE WITNESS: I don't really recall. I have discussed these items with both the defense and the prosecution, and we testified to it in the first trial and I cannot tell you who first told me about these items.

MR. JOHNSTON: I am not asking who first told you. Isn't it a fact that you have been told by both Government representatives and counsel for the defendant that such mistakes were made?

THE WITNESS: It wasn't a mistake. Our procedure was to include deposits as income unless otherwise identified. At the time I prepared this return, they were not identified as anything. It was a deposit.

BY MR. JOHNSTON:

Q Mr. Wright, I am not suggesting that you made a mistake. I am suggesting that the return was in error to the extent that non-income items were included as income; is that a fair statement?

A That's what I have been told.

Q And you have been told that by both representatives of the Government and counsel for the defense, have you not?

A Yes.

MR. JOHNSTON: All right, sir.

THE COURT: That's for the '78 return?

MR. JOHNSTON: Just in general or for '78 specifically.

Do you want me to limit this to the '78 return?

THE COURT: We are only talking about the '78 return, aren't we?

MR. JOHNSTON: I don't want to ask even these limited questions if it means that that return is going to come into evidence.

THE COURT: I understand, but that's all we are dealing with, isn't it?

MR. JOHNSTON: May I have some guidance from the Court as to whether I am risking that return coming in?

THE COURT: I will permit you to ask him whether or not he has been told with respect to the 1978 tax return which is not in controversy in this case that some errors were made with respect to it and follow through with what you have just recited.

MR. SHAW: May I inquire of Mr. Johnston through the Court as to what the hearsay objection is that he proposed to introduce what the prosecution and defense has told him?

MR. JOHNSTON: You are asking me?

MR. SHAW: I think it's hearsay and I think the proponent of the hearsay needs to offer an exception to the hearsay rule.

MR. JOHNSTON: This is cross-examination and he tells me he's been told.

MR. SHAW: Cross-examination is not an exception to the hearsay rule.

MR. JOHNSTON: Of course it is.

THE COURT: He said he's been told by both the Government and the defense.

I am going to let him do it whether it's hearsay or not.

All right, let's take a ten minute recess.

(Whereupon a recess was taken.)

THE COURT: Mr. Wright may resume the stand and we will call the jury, I guess.

(The following proceedings were held in open court before the jury.)

THE COURT: All jurors are present. All right, Mr. Johnston, you may proceed.

MR. JOHNSTON: Thank you, your Honor.

BY MR. JOHNSTON:

Q Mr. Wright, will you direct your attention to exhibit, Government's Exhibit 28, please, which I think is on the witness stand there with you.

Let me ask you first: The exhibit that is in evidence is a copy, isn't it?

A Yes, it is.

Q Do you know where the original is?

A I believe it's in my briefcase.

Q Do you have it with you?

A I do not have it here. It's downstairs.

Q All right, sir. If we don't conclude your examination before the noon recess, could I ask you to look it up and return with it after the noon recess, Mr. Wright?

A Sure.

Q Now, looking at the copy that you have, and letting the jury observe that, the blowup of that copy on the stand, I think for your purposes you will do better to see the copy that is actually in evidence?

A Yes.

Q This, I take it, is a note that you received from Judge Claiborne; is that right?

A That is right.

Q And the body of the note, that is the language, that's written is all in his handwriting is it not, or his printing?

A Yes, it is.

Q And the word "Jay", that's addressed to you, isn't it?

A Yes.

Q There is no date on the note, is there?

A No.

Q Do you recall when you received it?

A No, but it would be some time after January 16th, 1980.

Q Yes. Would you say it was some time prior to March 7, 1980?

A Yes.

Q All right. Now, some of the figures or notations on this exhibit are in your handwriting, are they not?

A Yes.

Q Specifically the notations that are made on the far right side, opposite the numbers that were put there by him, that's in your handwriting, is it not?

A Yes.

Q And then over on the left side, there is a notation "plane cost $11,000"; is that in your handwriting?

A Yes.

Q All right, sir. No question about that.

Now, the total on this exhibit appears to have been changed; is that right, Mr. Wright?

A Yes.

Q Was it originally written $45,000?

A I believe it was. That's what --

Q It looks that way, doesn't it?

A Yes.

Q And then a six was written over the five; is that right?

A Yes.

Q Now, did you make that change?

A No.

Q That was made before you received the exhibit, wasn't

it?

A Yes.

Q And the third item in this list of deposits is $1,000 deposit; is that right?

A Yes.

Q That appears to have been interdelineated or put in there after the other numbers had been written, does it not?

A Yes.

Q Did you put that in or was that in when you received it?

A That was in when I received it.

Q All right. Have you ever totaled this column of figures?

A Yes.

Q And what is the correct total?

A Forty-five.

Q It's 45 instead of 46?

A That's right.

Q So this total is in error?

A That's right.

Q All right, sir. Now, these numbers and notations that are made over here on the far right were made by you, weren't they?

A Yes.

Q And they were made at some later date, weren't they? Some time after you received this?

A That is right.

Q All right. We will get to that in a moment.

Will you read the first paragraph of that exhibit, please, Mr. Wright?

A "I have made application to assume a mortgage at this place. They wanted a letter from you what my earnings were for 1978, 1979 and 1980 to date from my private practice, not earnings on the bench."

Q All right, sir. Now, the letter or the note refers to this place. How did you know what that referred to?

A I didn't.

Q Was there something else that accompanied the note that identified the place where he was going to assume the mortgage?

A That wasn't important to me.

Q No, sir, I am just asking you whether something else came along with it that told you about Stanwell Mortgage Company?

A I don't recall.

Q You wrote a letter to Stanwell Mortgage Company; is that correct?

A Yes.

Q And did you do that in response to this request from

Judge Claiborne?

A A request, yes.

Q And this request that's contained in Government's Exhibit 28; is that right?

A But it doesn't state here who he wanted me to write to.

Q No, sir, but it must have been something else that identified Stanwell.

A Must have been.

Q You don't remember what that was?

A No.

Q But you did write a letter?

A Yes.

Q I am going to hand you Government's Exhibit 28 and ask you if that's a copy of the letter that you wrote to Stanwell Mortgage?

A It is.

Q Would you just read the body of the letter, please. It's addressed to Stanwell Mortgage. Read the letter.

A "I have been Judge Harry Claiborne's accountant for over thirty years and he has asked me to furnish you the following information concerning his earnings from the private practice of law. The year 1978, the year he went on the federal bench, his earnings from private practice of law was $78,723.46. His earnings from the private practice private practice of law for the year 1979 was $45,371.93. His earnings from the private practice of law so far in 1980 is $41,000.

Q All right, sir. Now, the $45,000 figure is the corrected total of these items that are on Exhibit 28?

A That is right.

Q And you gave him the correct figure, the 45 rather than the 46?

A Yes.

Q And the $41,000 figure for 1980 so far, when it comes right off of this note from the Judge, doesn't it?

A That's right.

Q Where did you get the figure for the year 1978?

A Probably from his Schedule C on his '78 return. If not, it would have been their work papers.

Q I am going to show you what has been marked for identification as Government's Exhibit 1978(sic) and without reading any of this into the record, ask you if by looking at that return you can tell us where you got the figure that you included in the letter to Stanwell Mortgage of $78,723.46.

I don't want you to read out loud from the document, Mr. Wright. Just tell us if you are able to discover how you arrived at the figure that you used in the letter to Stanwell Mortgage?

A No, sir, I cannot.

Q All right. Do you have any present recollection of how long before you wrote the March 7 letter to Stanwell it was that you received this note, this exhibit, Government's Exhibit 28 from the Judge?

THE COURT: March 7, 19 --

MR. JOHNSTON: We know the date on the letter. I am directing his attention to that.

THE COURT: The question was how long before March 7, 1980, was it?

BY MR. JOHNSTON:

Q Yes, sir, March 7, 1980. How long before that date, if you remember, Mr. Wright, in other words, how long did you have this note from the Judge before you wrote the letter to Stanwell?

A I don't recall. Just be some time after January 16th of '80.

Q Well, would it be fair to say that you didn't receive the letter as early as January and then wait until March to write to Stanwell?

A I would certainly assume that.

Q You didn't wait that long, did you?

A No.

Q Would you agree that it was probably some time early in March that you got the note from the Judge?

A I have no recollection.

Q All right. You evidently didn't have any practice in your office of stamping mail in when it was received; is that right?

A That's right.

Q You didn't do that with any correspondence that came in?

A No.

Q Now, included in Government's Exhibit 28 are letters to the First International Bank of Nevada, and First Western Savings and Loan Association, both in Las Vegas, that are dated May 22, 1980; is that right?

A That's right.

Q And the text of those letters is identical to what you had written in the letter to Stanwell?

A Yes.

Q Can you tell us why you wrote the letters to First National Bank and First Western Savings and Loan?

A At Mr. Claiborne's request.

Q Do you have a present recollection of his asking you to do that?

A Not specifically.

Q No. You wouldn't know for sure whether the request was made orally or in writing?

A No, I wouldn't.

Q You used exactly the same numbers in the second and third letters, did you not?

A Yes.

Q Now, I want to direct your attention to Government's Exhibit 30, Mr. Wright. Will you tell us please what's included in that exhibit?

A Items of income and deductions, withholding taxes, estimating possible tax for the year of '79.

Q Is there an extra copy of those documents in that exhibit, Mr. Wright? Is there a lost copy? The exhibit itself is in here. This is my copy. I am sorry. One of the documents included in that exhibit is a kind of work sheet, is it not?

A Yes.

Q Do you see that?

A (Nods head affirmatively.)

Q And I have put the blowup of Government's Exhibit 30-A here on the --

A Yes.

Q Is this the same sheet you are looking at?

A Yes.

Q I will ask you to look at what you have and perhaps the jury can follow on this.

Who prepared this work sheet?

A I did.

Q Did you do the whole thing?

A It appears to be all in my writing, uh-huh.

Q Mr. Wright, are the notations at the bottom here, "max tax" and so on and those numbers, are those all in your handwriting also?

A Yes.

Q Do you recall being questioned about this, about who prepared this exhibit at the previous trial of this case?

A Not specifically, but I recall discussing generally the form on top of that exhibit which is another document helping us to estimate the income tax. So the two is what was used to estimate the tax.

Q I see. All right. So, included in that exhibit there is a computation of maximum tax, isn't there?

A Yes.

Q And is that the document that was prepared by someone else?

A It appears that that is all in my writing also. It appears that's all in my writing also.

Q I want to read to you, Mr. Wright, a few questions that you were asked and answers that you gave at the previous trial and for counsel's benefit, I am at Page 333 of the transcript, and I will represent, I think it's correct that Government's Exhibit 49, which is referred to here in the first trial is the same as the exhibit that you now have before you?

A Uh-huh.

Q "Now, let me show you my Government's Exhibit 49. First, addressing your attention to the left, can you tell us what those documents are?

"A This is a computation of Mr. Claiborne's anticipated income tax for '79.

"Q About when -- who prepared this?

"A An accountant that worked in my office."

Do you recall giving that testimony?

A I do seem to recall that.

Q Is it your testimony now that that was incorrect?

A According to what I am looking at here, that would be incorrect. It just occurs to me that there is something else that we are missing here. I can't tell you what that is.

Q Some other document?

A Yes. I recall that was in an accountant of mine's writing. Part of the document was in an accountant's writing and part of it was in mine. This document here appears to be all my writing.

Q Oh, I see. All right. Is that equally true of the number 8,000 and the number 2500 that's entered over in the lower right-hand corner?

A That appears to be my writing.

Q Those appear to be in different ink as far as I can tell from the copy; is that true?

A Yes.

Q Were those written at a different time then?

A Yes. I think it was written later.

Your estimations as to the document itself is an estimation of what the total tax would be, this on the right side is what actually was done?

Q Yes. I am coming to that in a moment. I just want to understand first the question of who prepared the document, and I want to ask you some questions about the document.

A Okay.

Q This document was prepared, was it not, in connection with the preparation of an application for an extension of time to file the 1979 return; is that right?

A That is right.

Q And would you explain to us now, let's take the document, this page of the document that we are looking at item by item and just tell us what these items are that are listed here.

A The first item is his W-2 income on the bench, $54,000 and the second item is his total fees for his law practice, prior law practice that's coming in in 1979.

Q Yes.

A Interest income of $6,000, dividends in question we don't know what those are yet and a total, and less alimony.

Q Excuse me, could we pause at this point. Where you have written "total", let's go back a minute. Where did you get the $54,499 figure?

A Either verbally from Mr. Claiborne or it's possible we had his W-2 at that time. I don't know which.

Q Isn't it a fact that you got that figure from him over the telephone, and then later, perhaps the same day, you had the W-2?

A That's entirely possible.

Q Yes. Where does the $40,000 figure come from?

A That's the figure on Exhibit 48.

Q Please complete your answer. I didn't mean to interrupt. That is, the exhibit we were just looking at.

A Yes. That is the changed figure on that document.

Q Why did you use 46 instead of 40 when you were doing this work?

A I can't answer that. I don't know.

Q You had gone back to the total as actually shown on the note from the Judge, hadn't you?

A Yes. We were doing a maximum possible tax form, entirely possible we used the 46 in order to be sure that we were using the maximum tax that he might be subject to.

Q Do you think perhaps that you just forgot that the total on the note was incorrect and you took it directly off the note?

A I have no knowledge of why I used -- why I used one figure other than the other.

Q So you added those three numbers together and you got a total of $106,871.65; is that right?

A That is true.

Q Now, you subtracted alimony of $21,000?

A Right.

Q That's because that's a deductible expense, is it not?

A That's true.

Q And you wind up then with a figure of $85,871.85, correct?

A Yes.

Q What does that represent?

A Just an estimated adjusted gross income for that year.

Q All right, then you subtracted some numbers from that, haven't you?

A Yes.

Q What do those represent?

A Standard deduction of itemized deductions of $2300 because we have no detailed knowledge, and that is a figure that you can use if you don't have any other details.

Q You are going to be entitled to at least that much for a deduction?

A That's right and his exemption of $1,000.

Q All right, sir. Now, that resulted in a net figure, but the net figure isn't shown on here?

A That's right.

Q Now, as part of that exhibit, do you have a form? I can't read the number on my copy, but it's a computation of maximum tax -- may I approach the bench, your Honor?

THE COURT: Yes.

BY MR. JOHNSTON:

Q I am referring to form 4726 which is entitled "Maximum Tax on Personal Service Income"?

A Yes.

Q Now, was that form prepared at about the same time that this work sheet was being done?

A I would say approximately the same time.

Q And what's the purpose of that form? What does it do?

A It helps you to limit your tax on personal income, in case you have other taxable income.

Q Would you explain to the jury, please, what was the purpose of doing this work that we are talking about?

A To file a request for extension.

Q Why did you need to have this work in order to prepare the request for an extension of time to file?

A You need to put something on the return as to what you think your tax is going to be, what you may have paid on it already, and the balance due you are supposed to send in with the application.

Q All right. I think you said on the return, you meant on the application?

A That's right.

Q So the system is when you file an application for an extension of time to file the return, which would otherwise be due on April 15th, that you must make some kind of computation as to how much tax you think you still owe for that year, and you send a check with the application for that amount of tax, don't you?

A That's right.

Q That is getting the extension of time to file a return doesn't entitle you to an extension of time to pay the tax?

A Entirely right.

Q So you pay the estimated amount of tax along with the application itself?

A Or pay a penalty.

Q Or pay a penalty. And interest, right?

A Yes.

Q Now, if you will look at the computation of maximum special person service income, that's what it's called, you have started with a figure there of $84,871, haven't you?

A Yes.

Q Is that actually the total of these three items on here?

A No. If you look on items, Item No. 4, Line 4, the $84,871 is the figure that comes from the other.

Q All right. That's the adjusted gross income which came right off here, didn't it?

A Yes.

Q Or was it the other way around? Was this computation made first and then this put down?

A I can't tell you which came first.

Q All right. You must have added these up first to get this number and put it on the printed form?

A I would assume so.

Q All right, sir. And then on this computation, this printed schedule that's part of the exhibit that you have before you, you finally wind up with a number for the maximum tax, don't you?

A Yes.

Q And what is that figure?

A $33,928.

Q And that's the same number that's written on Exhibit 30, if that's what this is; is it not?

A Yes.

Q So would you say then that the probable sequence of events was that you did, you say the first part of this Exhibit 30 that we are looking at, you wound up with an adjusted gross income of $85,871. That number was then put on the printed schedule, and then on the printed schedule you have computed what the maximum tax would be on that amount of income, haven't you?

A Yes.

Q And that maximum amount of tax, you have said would be $33,928?

A That's right.

Q Now, when you prepare the application for an extension of time to file a return, you are going to send in the estimated amount of additional tax that's still owing for 1979, aren't you?

A If you have the money.

Q Yes, sir. That's what you are supposed to do, right?

A That's what you are supposed to do, yes, sir.

Q And in order to determine that, you are going to take credit for what's already been paid by withholding or in some other manner, aren't you?

A That's true.

Q So you have reduced that $33,000 figure by $17,347.96,
right?

A That's true.

Q And what does that figure represent?

A That's a withholding tax on his earnings as a judge.

Q You got that either over the telephone or off his
W-2?

A Yes, sir.

Q Just as you had gotten his amount of a salary as a
judge?

A That's true.

Q Did you probably get that at the same time, would you
say?

A Yes.

Q Both the salary and the amount that had been withheld?

A They are both shown on the same form.

Q All right. So you wind up then with a balance due
in 1979 of $18,080.04; is that right?

A Yes.

Q Now, you then prepared the application for an extension
of time, didn't you?

A Yes.

Q And that's included in exhibit, Government's Exhibit 30,
is it not?

A Yes, it is.

Q And you have it there?

A Yes.

Q What did you estimate in Government's Exhibit 30 as the additional amount of tax that would be owing for 1979?

A $8,000.

Q And that's the figure that's written over here in the margin, isn't it?

A Yes.

Q So that although you made a computation that showed you would probably owe a little over 16,000, you really cut that in half and reduced it to 8,000, haven't you?

A That's right.

Q Why did you do that?

A First of all, going back to the document, you will see back up there under dividends we have a question.

Q Yes, sir. That's up here.

A Yes.

Q All right.

A So we have an unknown figure.

Q That would increase income if there were dividends?

A That's right. Down below the 21,000 is written "employee business expense." We don't know what that is yet. That is going to reduce it.

Q Excuse me, Mr. Wright, will you look at that again. Th

$21,000 figure is alimony.

A Yes, I said below that is the words written employee business expense.

Q And you have a question mark?

A That's right.

Q So that would reduce income?

A That's right.

Q So you have got unknowns at this point?

A That's all right. We also have another unknown, the itemized deductions of $2300 we have on there. We don't know what his total itemized deductions are going to be yet.

Q They might be more than that?

A That's right. The taxes on his home alone is more than that, so we know it's going to be more.

Q He was on the bench the whole year of 1979, wasn't he?

A Yes.

Q What kind of employee expense, business expense did you think he might have?

A Traveling to Reno and other places that he was asked to go as a judge.

Q Things that he is not compensated for, not reimbursed for?

A I don't know. Sometimes you are allowed a certain per diem amount, but you may spend more than that.

Q And your thought was that the excess would be deductible?

A That's right. It would be.

Q And is it because of these unknown items that you then reduced the $16,000 figure to $8,000?

A Well, I would have to be talking with Judge Claiborne, of course, and pointing out the same things to him that I had pointed out to you, and he will then tell me what he is going to send in. I have no way of knowing.

Q This is your number, isn't it, the $8,000?

A That's just my writing.

Q You didn't get that from Judge Claiborne, did you?

A Yes.

Q The 8,000?

A Yes.

Q When did you get that from Judge Claiborne?

A Where else would I get a figure like that?

Q When did you get it from Judge Claiborne?

A I don't know. Some time before supposedly April the 11th, at which time he brought me a check for $8,000.

Q What was the purpose of making all this computation if you are going to wind up with a figure that you get from Judge Claiborne anyway?

A We just went through that.

Q But the computation served no purpose at all, did it?

A Yes. What if it comes out to $300,000 or no tax at all? It could have come out to zero or $100,000. You have to have something to start with. We knew it would be something, assuming that it would be something less than I came up with. He tells me then what he's going to send in and makes a check for it.

Q Do you have any present recollection of Judge Claiborne telling you that the figure should be $8,000?

A I don't recall if he told me that. He just brought me a check for that. If he told me before or just says, "I will make it for something," I don't know. I can't recall that specifically. I don't tell him what to make the check for. He can use his own judgment. I am telling him his tax will probably be less than $16,000 and you can send in the $16,000 if he wants to, just to make sure.

Q Isn't it a fact, Mr. Wright, that you told him to bring a check for $8,000?

A I doubt that very much. Why would I tell him to bring a check for $8,000?

Q Why would you write the number on your own schedule if it's not a number that you have arrived at yourself?

A We have determined those numbers were written later and later is when he brought me a check for 8,000.

Q I am sorry. I perhaps didn't understand that. How much later was the $8,000 figure written?

A I can't tell you that. It's just not the same writing, and I am assuming that it was later.

Q If the $8,000 figure originated with Judge Claiborne and he is the one who decided that he was going to send in a check for $8,000, what is the point of you putting it on the schedule?

A Just make a note of what we are doing.

Q But you show that on the application for automatic extension of time, don't you?

A Well, we have the same figures on other documents too, different documents.

Q I will direct your attention to the application for the extension of time, Exhibit 30.

A Okay.

Q That shows a balance due of $8,000, doesn't it?

A Yes.

Q That is the same figure that you have got on here?

A That's right.

Q In order to arrive at that figure, you had to back into a figure for the total tax you expect to owe for 1979, did you not?

A That is true.

Q And is the figure that's shown there for that total tax you expected to owe for 1979 is $28,847.96; is that right?

A That's right.

Q You had actually calculated a figure of $33,928, hadn't you?

A That's right.

Q And that $23,000 figure then is arrived at by starting with 8,000 that is going to be paid, that you are going to show as being the balance due, and then adding back to that the amount that had been withheld, the $17,847.96, and that gave you the first figure then which is the total tax you expect to pay, isn't it?

A That's right, and that's the way we do them all. This figure must be mathematically correct figure so whatever you are going to send in plus whatever credits you have, has to be the first figure. You are backing into this unless you do put the 16,000 plus the withholding up there. Then those two figures would be added together. Then he sent in the exact amount that we computed, see. You don't use the exact computed figure, you must back in this way in order to fill out the application for extension.

Q It's my understanding then and correct me if I am wrong, that you went through a mathematical computation here to determine at last an estimate of what the judge's adjusted gross income would be for 1979. You calculated what the tax would be on that amount of income, and you came up with a figure of $33,928?

A True.

Q And on that he would have owed 16,000 plus in addition to what had already been withheld from his salary?

A That's true.

Q And then the Judge told you to use an $8,000 figure for the balance due and you disregarded all of these computations; you latched onto the $8,000 figure, put that on the application and then backed into the number for the total tax you expect to pay; is that right?

A That's exactly what we had to do.

Q This application is prepared by you, was it not?

A Yes.

Q And you signed it?

A Yes.

Q The number that is shown on that is to the total tax you expect to pay. This is not the number that you thought the Judge would have to pay, is it?

A No, I don't know what he was going to have to pay because we still had three unknown figures. We knew it was going to be different from that figure. How much, you know.

Q You didn't have any reason to conclude that it was only going to be half the amount that you computed, did you?

A No.

Q Now, included in that exhibit also, I think, is a declaration of estimated tax for the year 1980; is that right?

A That is true.

Q You find that?

A Yes.

Q And that shows, that reports an estimated tax for the year 1980 of $10,000; doesn't it?

A Yes.

Q And the first quarterly payment then is shown as $2500; isn't it?

A That's true.

Q And that's the number that's written in the lower right-hand corner of this work sheet, is it not?

A That's true.

Q But you have got notations on the work sheet which indicate first quarter 1980, $4,000. How was that arrived at?

A $4,000 relates to the 16,000 up above.

Q Yes. So having calculated that his amount of tax in 1979 over and above withholding would be 16,000, you then assume it's going to be about the same for 1980 and you are entitled to do that, aren't you?

A Yes.

Q And that would have meant an estimated tax of 16,000 for 1980, and the first quarterly payment of 4,000, wouldn't

it?

A Yes.

Q But instead of that, you filed an estimate that showed a tax of $10,000 in the first quarterly payment of 2500, right?

A That's true.

Q Why did you do that?

A Judge Claiborne decided that's what he wanted to pay.

Q This was all Judge Claiborne's decision?

A I can't make a decision what he is going to pay.

Q Didn't you tell him to bring you a check for $2500 for payment on his estimated tax for 1980?

A I might have if we decided that's what he was going to pay. I can't decide what Judge Claiborne is going to pay.

Q No, sir, but didn't you tell him what he should pay on that, wasn't that part of your work for him as an accountant?

A If I did, it would have been the $4,000.

Q Did you tell him what he should pay?

A I don't recall that. I am sure I probably did.

Q Do you have any recollection about talking to him about this at all?

A Not specifically.

Q All right. Now, on April 11th, 1980, this work sheet was prepared, was it not? On or about that same day?

A It could have been. Certainly prior to that.

Q And the application for an extension of time to file a return was prepared on April 11th, 1980, wasn't it?

A Yes.

Q And you got a check from Judge Claiborne for $8,000 payable to the IRS, didn't you?

A Yes.

Q And I think you testified yesterday that that was also dated April 11th, 1980?

A I don't have a copy of that check. If I did, I would assume that's correct.

Q Is that your best recollection?

A Yes, it is.

Q All right. The declaration of estimated 1980 tax was prepared on April 11, 1980, was it not?

A There is no date on the application, but I assume it was; check itself for $2500 is dated April 11th. I assume that, right. We normally do the estimation for the next year at the same time you put in an application for the present year.

Q Yes.

A I assume it was prepared on April 11th.

Q And Judge Claiborne signed the check for $2500?

A Yes.

Q And he had signed the check for $8,000?

A Yes.

Q And he signed the declaration of estimated tax?

A Yes.

Q Showing a $10,000 estimated tax, didn't he?

A Right.

MR. JOHNSTON: Your Honor, it's only five minutes of the hour, but I am about to start on a rather extended cross-examination in some detail.

THE COURT: I will keep time and excuse the jurors for lunch.

MR. JOHNSTON: Thank you, your Honor.

BY MR. JOHNSTON:

Q Mr. Wright, since you used the $46,000 figure as the Judge's income from fees in 1979, it is clear, is it not, that you had not yet gone back to try to analyze the bank deposits that were listed on Government's Exhibit 28?

A That's true.

Q So that as of April 11th, 1980, you had not yet made your analysis or made these notations on the side?

A I had not made those notations.

Q All right, sir. Do you have any specific recollection of the things that happened on April 11th, 1980?

A (No response.)

Q Do you remember that day at all?

A I recall refreshing my memory, since these proceedings have started, in looking at my note schedule that I keep, I have worked on Judge Claiborne's return, prior to that, and -- excuse me. Not specifically.

Q You have made an attempt to refresh your memory since the first trial?

A No, not on this item.

Q You referred to a note schedule. What is that?

A I beg your pardon?

Q You just mentioned a note schedule. What is that?

A I am sorry. I don't recall.

Q Perhaps I misunderstood. Could we have that answer read back, please. I may have misunderstood.

(Whereupon the record was read.)

BY MR. JOHNSTON:

Q What is the note schedule that you keep?

A My time schedule that is what I am working on each day.

Q I see. Do you retain your time schedules for these periods that we are talking about?

A Yes.

Q Do you have them with you in Reno?

A No.

Q Where are they?

A In Las Vegas.

Q Have you shown those to the Government representatives?

A No.

Q Have you consulted with representatives of the Government in attempting to refresh your memory on these matters since the last trial?

A Not on this item.

Q You have talked with them about other items?

A Yes.

Q But not on this item?

A No. I shouldn't say that. We have discussed this item. Not relative to my notes, the note schedule I referred to.

Q I see.

A I have not discussed that with them relative to this item.

Q But relative to these items, this item itself you have had discussion with the Government people?

A That's right.

Q How many such discussions have you had?

A I don't specifically remember.

Q Do you have a number?

A One or two I'd say.

Q Can you tell us whether it was one or two?

A Not specifically.

Q When did the discussions take place?

A Some time in '83.

Q In '83?

A I have some 100 hours into this case. I cannot tell you exactly when we might have discussed this.

Q Do you have 100 hours logged of discussions with Government agents on this?

A No. I have not logged them. We just estimated that somewhat recently.

Q Could you estimate now that you spent 100 hours talking with Government people in connection with this case?

A And defense. I have talked with you in my office also, yes.

Q How long would you say that conversation lasted?

A Possibly a couple hours.

Q You think it was that long?

A Hour,hour or two.

Q That conversations was in the early part of March of 1984, wasn't it?

A I believe it was.

Q About a week before you testified in the first trial?

A Yes.

Q Have you had conversations with Government people since the first trial of the case on these matters?

A Yes.

Q How many times?

A Once, twice.

Q Are you unsure of whether it's once or twice?

A Once in my office and once up here.

Q When was the discussion in your office?

A About ten days ago. Between a week and two weeks ago.

Q Who were you talking to on that occasion?

A Steven Shaw and Don Skelton.

Q How long did that meeting take?

MR. SHAW: We object, your HOnor. I don't mind some of this, but this is getting too far afield here.

THE COURT: We have gone into that enough. He discussed it with both sides.

BY MR. JOHNSTON:

Q Mr. Wright, have you had any discussion with any representative of Judge Claiborne since the first trial in the case?

A No.

Q You certainly haven't talked with me, have you?

A No.

Q And you haven't talked with Mr. Raggio or Mr. Goodman or the Judge, have you?

A No.

Q All right. Now, Mr. Wright, do you recall that on or about April 11th when these documents were being prepared by you in your office that you called Judge Claiborne on on the telephone and you asked him what his salary income had been in 1979?

A I must have asked him that before April 11. Is that your question?

Q No, sir. My question is whether or not or about that date you called him and asked him what his salary income was. I don't want to pin you down to a specific date, but either on April 11, 1980 or shortly before that, didn't you call him and get from him the amount of his salary?

A Yes.

Q And that's the $54,000 figure that you put on your work sheet, is it not?

A Yes.

Q All right. At the same time, did you obtain from him the amount that had been withheld from his salary?

A Yes.

Q For 1979?

A Again, I either called him or I had it in my possession at that time.

Q But he had the W-2, didn't he, to begin with?

A To begin with?

Q Yes. Do you recall calling him and getting that information from him over the telephone?

A I don't recall if I got that on the phone or whether he sent me the W-2.

Q All right. Do you recall calling him on the telephone on April 10th, the day before these things were prepared or on April 11th and asking him to, telling him that you had to have the W-2 and that you needed a check for $8,000 to go in with the application?

A After it was decided what he was going to pay, I would request a check, if I wanted to associate it with the documents.

Q However that was decided, you had to have a check, didn't you, to go with the application for extension of time?

A Yes.

Q And isn't it a fact that he sent his secretary, Judy Ahlstrom, down to your office with the W-2 and a check for $8,000?

A I do not recall that.

Q You don't recall that?

A No.

Q Do you have any recollection at all as to how you came into possession of the W-2 and the $8,000 check?

A No.

Q Do you recall at that time perhaps in the same day on April 11th you called Judge Claiborne and told him that in addition you would need a check for $2500 to go in with his declaration of estimated tax for 1980?

A That's true.

Q You remember that?

A Yes.

Q Was that on April 11th?

A Yes.

Q The very day?

A Yes.

Q And do you recall then that he personally brought to your office a check for $2500?

A I believe he did.

Q All right, sir. But you don't recall Judy Ahlstrom coming down with the other two items.

MR. SHAW: Objection. He's answered that a couple times.

THE COURT: He's already answered it.

MR. JOHNSTON: All right.

BY MR. JOHNSTON:

Q Now, Mr. Wright, I want to show you what's been marked for identification -- this is one of the exhibits that was in evidence in the first trial, your Honor.

THE COURT: Yes, I have seen this coming. You may have it. It's Defendant's Exhibit 1 and it still bears the same number. We won't change the number.

MR. SHAW: Your Honor, I would ask the Court to instruct Counsel not to refer to what was in evidence or not in evidence in the prior trial. This is not going to come in evidence this time.

THE COURT: You are not to refer to the prior trial except for any contradictory statements.

Members of the jury, as you probably already know, the case was tried previously, but that is of no concern to you and you should not even discuss it as far as your consideration of the case is concerned.

BY MR. JOHNSTON:

Q I will show you a document that has been marked for identification at this point as Defendant's Exhibit 1, Mr. Wright, and ask you what that is?

A It's a document in Judge Claiborne's writing.

Q Is it addressed to you?

A Yes.

Q You received that letter from Judge Claiborne on or about April 11, did you not?

A I don't ever recall having received this document.

Q You have no recollection of receiving it?

A Before Oscar Goodman brought it to my office, some time in the fall of '83.

Q Will you direct your attention back to Government's 28, please?

A Yes, sir.

Q The note from Judge Claiborne to you. On that note, there is a notation which you have said you made over on the left side. It says "plane cost $11,000"; right?

A Yes.

Q Isn't it a fact that that information came to you in this letter dated 4/11/80?

A I don't think so.

MR. SHAW: Objection, your Honor.

THE COURT: He said he never recalled receiving it, so I don't -- we can't read the letter at this time.

MR. JOHNSTON: I am not asking him to read it, your Honor.

THE COURT: Well, you are asking him, he said he never received the letter that he has any recollection of it until Mr. Goodman showed it to him.

THE WITNESS: November 8th or something like that of '83.

BY MR. JOHNSTON:

Q What was the source of your information of the plane cost $11,000?

A Judge Claiborne told me that when he was telling me what the other items were on the right side.

Q When was that notation placed on this work sheet?

A At the same time we placed the ones on the right side of the work sheet.

Q And that's your best recollection?

A Yes.

Q Do you recall testifying on this matter at the previous trial of this case?

A Yes.

MR. JOHNSTON: May I have just a moment, your Honor.

For the benefit of counsel, I am looking at Page 368 of the transcript.

BY MR. JOHNSTON:

Q I want to read you from the transcript of the first trial, Mr. Wright, certain questions that you were asked and answers that you gave. These are questions by me.

I am sorry. I will have to begin back on 367 or simply explain to you that these questions related --

MR. SHAW: Your Honor, we would object to this procedure. The proper procedure is to show it to the witness first to see if that would help him.

MR. JOHNSTON: On the contrary, your Honor. I am not required to show it to the witness first under the rules.

THE COURT: I think you may be technically correct there, but now you are referring -- I don't know what you are going to read.

MR. JOHNSTON: I am quite happy to have the witness have a copy to follow along, if that's feasible.

THE COURT: Well, I am going to excuse the jury for lunch at this time in any event. Members of the jury, you are excused until 1:30.

(Whereupon the jury was excused and the following proceedings were held in open court outside the presence of the jury.)

THE COURT: May I inquire what is the prior inconsistency if any of Mr. Wright's present testimony without, from the prior trial with respect to Defendant's Exhibit No. 1 which is the letter from Judge Claiborne to Mr. Wright. What is the prior inconsistency?

MR. JOHNSTON: He previously testified that he used the information as set forth in this letter about the purchase and sale of an airplane in preparing the 1979 return.

Let me read the precise testimony from that point on, your Honor.

"Q Why didn't you use the information about the fees received since he became a judge in the amount of --"

THE COURT: Where is the part where he says that he did use the information contained in the letter?

MR. JOHNSTON: On Page 368, if the Court please. Maybe I should just read the transcript if I may.

"Would you read it please, Mr. Wright?"

That's my question. I had him read the letter. He read the letter aloud. Included in the letter is a statement "I sold my airplane in April and received $11,000. I paid $11,000 for it so there is no profit or loss. I don't have any Nevada Savings interest statement, I thought I sent it to you. If not, I will get it." Signed Harry.

THE COURT: I understand the letter, but the letter, he said that he didn't see it. The first recollection he has of seeing it is when Mr. Goodman showed it to him on or about November of 1983.

I want to know where is the inconsistency?

MR. JOHNSTON: If you will permit me to read a few more lines, your Honor.

"Q Now, you used the information about
the purchase and sale of the airplane in
preparing the 1979 return, didn't you?"

THE COURT: That's not the information stated in the letter.

MR. JOHNSTON: It is, your Honor. It's precisely the information. I am sorry.

THE COURT: Well, I will have to read the transcript.

MR. SHAW: Your Honor, the Court hit the nail on the head. He said he used information about the airplane.

it didn't have to come from this letter.

THE COURT: The question is, did he get it from the letter?

MR. JOHNSTON: My question immediatelly followed his reading the letter verbatim, and I asked him then:

> "Now, you used the information about the purchase and sale of the airplane in preparing the 1979 return, didn't you?"

He answered, "Yes." I then said:

> "Why didn't you use the information about the fees received since he became a judge in the amount of $41,083.93?"

His answer was:

> "Well, we determined that this was not the correct figure."

That clearly implies that he had the letter and that he had read it and that he had made a determination that that figure was incorrect, your Honor.

THE COURT: I don't agree with you.

You had him read the letter at the top of Page 368. He had previously said, however, had he not, that he had not seen the letter until Mr. Goodman showed it to him?

MR. JOHNSTON: No, your Honor, he had not. That came in on redirect examination of my cross. He then said that he hadn't seen the letter Mr. Goodman showed to him.

THE COURT: On Page 366 he said, "Yes, I assume I received it."

MR. JOHNSTON: And on that basis, we put it into evidence. He said he didn't have the original with him, but he probably had it in his office, I think. I recall that testimony.

MR. SHAW: He said he assumed he received it, and later testified he received it from Mr. Goodman. His assumption was correct.

MR. JOHNSTON: I think his testimony on redirect had to do with the copy that he received from Oscar Goodman, not the original.

THE COURT: Where did he first say that he didn't receive it until Mr. Goodman showed it to him?

MR. JOHNSTON: Somewhere in his redirect, I believe, your Honor.

MR. SHAW: 402, I believe, your Honor.

403, Line 13.

THE COURT: The question -- he could use the information very easily, but the question was not asked of him whether or not, from the letter in question of April 11, 1980, that he took that particular information and used it.

MR. JOHNSTON: I submit, your Honor, that the inference is very clear. He just read the letter, which has information about the purchase and sale of the plane. I asked him, "Now, you used the information about the purchase and sale?" and he said, "Yes."

I asked him, "Why didn't you use the information about the fees?" and his answer was, "Well, we determined that was not the correct figure."

THE COURT: And then on Page 403, Hendricks asked him, "When was the first time you recall having seen that document," and his answer, "As I recall now, it was brought to my office, I would say, a couple of months ago."

"Q By whom?

"A Oscar Goodman.

"Q Did you ever see it before then?

"A I don't recall ever having seen
it before."

MR. JOHNSTON: I am familiar with that testimony. I understood it referred to the copy that was brought to him by Oscar Goodman. In any event, I submit that this testimony is inconsistent.

THE COURT: You may question him further about whether he did receive it, the original. I agree with you there. If he received the original, that's one thing, but if Mr. Goodman just brought him a copy a few months prior to the trial, I agree if he has seen the original, and did receive it on or about April 11, 1980, you may introduce all of this.

MR. JOHNSTON: What I am trying to do --

THE COURT: Did you ever see the original of the letter?

THE WITNESS: I don't believe so, your Honor. I would have done several documents differently had I ever seen this letter. The original.

THE COURT: In your original file papers, have you hunted for that?

THE WITNESS: We have made an exhaustive search, myself and my secretary.

MR. JOHNSTON: Would your Honor care to look at a copy of the letter?

THE COURT: I am familiar with the letter.

Well, I don't think it's proper to read this prior testimony under the circumstances. The question is not specific enough in my judgment.

MR. JOHNSTON: At the very worst, your Honor, he gave inconsistent testimony.

THE COURT: I don't say it's consistent.

MR. JOHNSTON: I am talking about the two times he testified at the first trial. His testimony on cross and then on redirect may appear to be inconsistent, but it seems to me I am entitled to attempt to stimulate his memory and impeach his testimony if I have to buy the testimony that he gave in response to my questions on cross-examination. He can explain it if he's got some way to explain it away. I think I am entitled to read that and ask him to -- if he has an opportunity to deny it or explain it if he wants to.

THE COURT: If your question had been more specific at the prior trial, you can use information but you didn't ask him specifically, "Did you use the information that was actually set forth in this letter?" And that "That's where you got the information?"

MR. JOHNSTON: Your Honor, had I been referring generally to information, I would not have said the information. My question was, "You used the information about the purchase and sale," and I submit that that clearly referred back to, and everybody understood it to refer to the information that was contained in the letter. I don't see how it could be understood any other way.

THE COURT: All right, Mr. Shaw. What is your feeling about it?

MR. SHAW: Your Honor, obviously Mr. Wright interpreted it the other way. His answer was clear and even later in redirect, it was clear that he was aware of airplane related information. It could not have come from that letter because he said he never saw it until Oscar Goodman gave it to him. Obviously his understanding at the time of it was that it was a general --

MR. JOHNSTON: I go back to Page 366, the question was, "Is this a letter that you received from Judge Claiborne?"

His answer is, "Yes, I assume I received it."

THE COURT: He assumed he did receive it.

I take it he did receive it certainly when Mr. Goodman took him a copy.

MR. JOHNSTON: My question was whether he received it from Judge Claiborne and he said yes.

MR. SHAW: He assumed it. His answer was an assumption and that should have been stricken at that time. He was guessing. That's not an inconsistency.

THE COURT: I will give it consideration. At the moment, I don't think it's appropriate.

We will be in recess until 1:30 p.m.

(Whereupon the luncheon recess was taken.)

(The following proceedings were continued outside the presence of the jury.)

THE COURT: Ladies and gentlemen, since we have recessed, I have read the testimony of Mr. Wright and the examination by both Mr. Johnson and Mr. Hendricks at the prior trial.

I think the question is doubtful, however, I have previously sent notice to you that I will permit Mr.

Johnson to read Page 366, Line 11 through 17 and beginning on Page 368, Line 1 through Page 369, Line 1, as well as the testimony on redirect examination at Page 403, Line 9 through Line 20, and then Mr. Johnson may, without reading from the prior trial, interrogate Mr. Wright as to the possible loss of records which is noted on Page 403.

Mr. Wright, of course, is at liberty to make any explanation he desires with respect to any confusion if any that may have been in his mind at that particular time.

I think that the issue is note free from down, but in a case such as this, you have but one alternative.

As to the testimony of Miss Becker, my secretary has advised her to be here on Monday at 9:30 a.m. During the course of that conversation she asked about Mr. Eaton. My secretary, acting upon what was said in chambers, stated that Mr. Eaton would not be needed. However, if the Government wishes to have Mr. Eaton here, please countermand those instructions.

The critical question as to whether the Becker testimony would be admissible probably is touched upon in United States against Hall, 653 F.2d at 1002, a 1981 decision by the Fifth Circuit. It is stated, "The Government's hypothesis of any criminal prosecution consists of the offenses charged and the relative defenses if any raised to defeat criminal liability." Citing Weinstein on evidence.

One of the main defenses asserted, if not the main defense or the only defense, may well be whether items of omitted income were reported to the tax preparers.

The letter of April 11, 1980, I believe which in the prior trial Judge Claiborne stated that he wrote and I believe was taken according to the lady's name who escapes me for the moment, but served as secretary to Judge Claiborne was, according to her, delivered in evidence, delivered to him, but getting back to the testimony of the Becker woman, the Court said in summary, this is at Page 1008. Defense counsel should be permitted to elicit on cross-examination those facts from which the jurors as the sole triers of fact and credibility might draw appropriate inferences relating to the reliability and truthfulness of the witness.

Well, that came to light according to Mr. Wright just a couple of months before the trial. The document number 47, I believe it is, Exhibit 47, Defendant's Exhibit 47 at original trial at least was a notebook or book of some type that Judge Claiborne testified to was kept by him as a means of a record. There could be an inference drawn by this jury that that notebook was prepared as an afterthought, after the investigation or just before the trial and perhaps after the indictment even, although possibly not.

In any event, it seems to me that in the absence of the Government's willingness to stipulate as to what Mrs. -- Miss Becker would say in accordance with her report, the defense has a right to have her called to at least establish that the ink tests were essentially, in all except two instances, the ink matched the standard inks which were available at their purported date of use. Two of the items did not match any standard inks in the library maintained by the laboratory. I am going to permit Miss Becker to testify. She has been instructed to be here on Monday, whether Mr. Eaton comes, counsel for the defendant has stated they do not want him. While this does not of course prove the authenticity of the particular exhibit as such, it is probative in some sense to prove that the inks used did match the inks used at the various times when the entry was purportedly made.

I think it's of sufficient conference, sufficiently important to say that the jury might draw an appropriate inference relating to the reliability and truthfulness of Judge Claiborne's testimony, and I am going to admit that testimony.

I take it, Mr. Shaw, if there is any different feeling about Mr. Eaton and his necessity of being here, the

Government will make the appropriate --

MR. SHAW: That's correct, your Honor.

MR. JOHNSTON: May I ask a question, your Honor? With respect to reading back the testimony of Mr. Wright at the first trial, it's my understanding that if I wish to read the portion of his testimony on my cross-examination of the first trial, I must also read this portion of his testimony on redirect?

THE COURT: Either that or yield to Mr. Hendricks and let him read it. It makes no difference to me.

Call the jury.

Mr. Wright, I take it, is here?

(The following proceedings were held in open court before the jury.)

THE COURT: All jurors are present. All right, Mr. Johnston, you may continue.

MR. JOHNSTON: Thank you, your Honor.

BY MR. JOHNSTON:

Q Mr. Wright, do you recall testifying at the prior trial?

A Yes.

Q I want to read to you from the transcript of that trial, first at Page 366, beginning at Line 11 and continuing through Line 17, certain questions that you were asked and answers that you gave. These questions, incidentally, were by me.

"Q I am going to hand you, Mr. Wright, a copy of a letter dated 4/11/80, addressed to Jay and signed Harry, and ask you whether you have ever seen this before.

"A Yes.

"Q Is this a letter that you received from Judge Claiborne?

"A Yes. I assume I received it."

Turning now to Page 368 of the trial transcript, beginning at Line 1 and continuing through Line 1 on the following page, which is 369:

"BY MR. JOHNSTON:

"Q Would you read it, please, Mr. Wright?

"A Yes. It's dated April 11th, 1980, addressed to Jay. 'Enclosed check in the amount of $8,000 and W-2 form from United States Courts as requested. Fees received during 1979 for practice before I became a judge are $41,073.93. I also sold my airplane in April, received $11,000. I paid $11,000 for it, so there is no profit or loss. I don't have Nevada

Savings interest statement. I thought I had sent it to you. If not, I will get it.' Signed Harry.

"Q Now, you used the information about the purchase and sale of the airplane in preparing the 1979 return, didn't you?

"A Yes.

"Q Why didn't you use the information about the fees received since he became a judge in the amount of $41,073.93?

"A Well, we determined that that was not the correct figure.

"Q What do you mean when you say 'we determined'?

"A Well, I should say Mr. Claiborne determined.

"Q Mr. Claiborne determined?

"A Yes. He's the only one that can determine that. So in analyzing his deposits, we had determined that they were not all income."

I am turning now to another portion of the transcript, this is a portion of your testimony, Mr. Wright, on redirect examination on Page 403, beginning at Line 9 and reading through Line 20.

THE COURT: By Mr. Hendricks?

MR. JOHNSTON: Yes, your Honor. The questions are asked by Mr. Hendricks.

BY MR. JOHNSTON:

Q "Q All right. Let me show you what's been marked for identification as Defendant's Exhibit 1. I believe you were shown this during cross-examination?

"A Yes.

"Q When was the first time you recall having seen that document?

"A As I recall now, it was brought to my office I'd say a couple of months ago.

"Q By whom?

"A Oscar Coodman.

"Q Did you ever see it before then?

"A I don't recall ever having seen it before."

Now, Mr. Wright, if you wish to explain in any manner that testimony, I would offer you this opportunity to do so.

A Okay. When I was seeing this document at the prior trial, and asked about the airplane amount of 11,000, I had that information from two other documents. It simply did not relate to the fact that it was also here where I might have gotten the information.

The same thing in the 41,000. I never saw that figure or I would have written letters or determined whether a 45,000 figure was right or a 41 long before the trial date.

Q What are the two other sources from which you had the information about the airplane?

A Mr. Claiborne indicated what were fees in the deposit list. That's the document you asked me to bring the original of.

Q Yes. That's 38.

A Yes.

Q You are looking at Exhibit 28, are you?

A Yes.

Q I will put the blowup on the tripod.

You have brought with you the original of that letter, have you?

A Yes.

Q All right. Directing your attention now to the notation on the left side of the letter --

MR. SHAW: Excuse me, your Honor. I don't believe the witness has answered the question. He was listing the two other documents that were related and he identified this as being one and then Mr. Johnston went into some questions about that one.

MR. JOHNSTON: I will get to the other one in due course, your Honor.

THE COURT: Well, I haven't seen the exhibit, but you may proceed and the balance can be brought out either by you or on redirect.

BY MR. JOHNSTON:

Q Mr. Wright, you are looking now at the original of this letter addressed to Jay, which is in evidence as Government's Exhibit 28; is that right?

A Yes.

Q And directing your attention to this notation that says "plane costs $11,000"; is that right?

A Yes.

Q Whose writing is that?

A That's my writing.

Q When was that placed on this sheet of paper?

A Some time after May 22nd, 1980.

Q All right. How do you place the date?

A That's when detailed listing or separation of the deposits was listed on the right side of the page. We also made the note on the left side of the page as to the cost of the airplane.

Q How do you -- on what basis do you say it was after May 22nd? Because on that date you wrote to the two banking institutions?

A Yes.

Q And you still used the larger number?

A That is right.

Q All right, sir. Do you have a present recollection of writing that notation about the cost of the plane on this document?

A Not particularly.

Q You don't remember actually writing it, do you?

A Not particularly.

Q There is no question it's in your handwriting?

A Yes, right.

Q All right. Do you have any specific recollection now, I want you to distinguish carefully between what you may reconstruct on the basis of what you now see or not on the one hand and a mental picture and imagine in your own mind as a present recollection of writing these notations and numbers on the right-hand side of the exhibit.

A Not particularly.

Q All right. You said there was another source from which you had information about the airplane also?

A Yes.

Q What was that?

A That's another document from Judge Claiborne. I don't know what the exhibit number is, but it is in evidence.

Q Can you describe it to me?

A Yes. Relative to the airplane, it's in Judge Claiborne's writing that he sold the airplane for $11,000 and his cost was 11,500 and I computed a $500 loss. That was a nondeductable item.

Q Do you have Defendant's Exhibit 1? Isn't that the very document that you are talking about?

A No.

Q The letter?

A No.

Q There is still another document?

A Yes. I don't believe I have it up here. I think it was a later document than 28 but I can't say that for sure, either.

Q I am sorry, Mr. Wright. I don't know what document it is that you have reference to.

MR. SHAW: 31, your Honor.

BY MR. JOHNSTON:

Q I will show you a document that's been received in evidence as Government's Exhibit 31 and ask you if that's the document that you are talking about?

A That is it, sir.

Q Is it your testimony that you received Exhibit 31 before you entered this notation on Exhibit 28?

A No. I said I received this later.

Q Yes. So at the time you made the notation, you didn't have an exhibit 31, did you?

A I don't suppose I did.

Q Pretty clear, you are not really doubtful about that are you, Mr. Wright?

A No. I would say that it would have to be after.

Q Because Exhibit 31 is the very last stage of the process, isn't it? Those are the sheets that you finally used when he prepared the 1979 return?

A One of them, yes.

Q One of what, Mr. Wright?

A One of the documents used to prepare the '79 return.

Q Yes. I didn't mean to suggest those were the only things you used. You did use those?

A Yes.

Q And this would have been just shortly before the return itself was prepared, right?

A Supposedly. It's after May the 22nd and we prepared the return and filed it on June 15th.

Q It's perfectly clear that it was after you made the notations on this document, isn't it?

A That's right.

Q Because the number that you used out of Exhibit 31 hadn't been computed until you made these notations?

A That's right.

Q All right, sir. Thank you.

Now, some time then after May 22nd, 1980, you went back to this note that you had received from Judge Claiborne, didn't you?

A Yes.

Q And attempted to analyze these bank deposits, didn't you?

A Yes. I didn't. Mr. Claiborne did.

Q Well, I want to ask you about that. Let me ask you first whether it isn't true that up to that point you had understood from this letter that Judge Claiborne was telling you that he had received fees of $46,000 in 1979, didn't you?

A Yes.

Q That's what that letter meant to you?

A (Nods head affirmatively.)

Q What was the occasion for going back and attempting to analyze these deposits?

A Mr. Claiborne told me that we had to do that or he had to do it because there was items there that was not income.

Q When did he tell you that?

A I don't remember. Some time after May 22nd and before June 15th.

Q Do you presently have any specific recollection of his telling you that?

A No.

Q In any event, you did undertake to analyze these deposits, didn't you?

A He did, yes.

Q This is your writing, isn't it, Mr. Wright?

A I am writing down figures that he gave me.

Q Were you sitting down -- you say you don't have any specific recollection of the conversation, so you don't know whether he was with you or on the telephone?

A That's true. He has to give me the figures to write down.

Q Does it really come down to this: that because you see the figures there and you now believe that you could only have gotten those figures from Judge Claiborne, that you are testifying that he gave you the information; is that about what it amounts to?

A That's right.

Q All right, sir. Now, in attempting to analyze the deposits, you were really in a sense pursuing the method that you had followed through the years, weren't you?

A (No response.) Basically.

Q You didn't have the bank deposits this time?

A That's right.

Q But you had a list of deposits. Did you think that these were all of the Judge's bank deposits in 1979?

A I got no detailed information from Judge Claiborne in

'79 in our original regular procedure. '79 was completely different.

Q I understand that, but was -- were you somehow under the impression that he had only made one, two, three, four, five, six, seven bank deposits in 1979?

A I have no idea what he did.

Q Were you under the impression that those were all of his bank deposits in that year?

A I have no idea. I had no contact with him through the year. No receipts from the banks. Very skimpy at the very first part of the year. It was just not a year that was the same as the prior years.

Q Well, did you ever ask him to bring in his bank statements for that year?

A No. He had gone on the bench. Our work had ceased in the regular bookkeeping sense that we had done before. That was no longer in existence.

Q But it was your belief, wasn't it, that all of the fees, all of the deposits that represented fees would be included somehow in these seven deposits?

A He writes in Exhibit 28, "Here is the tabulation taken from my deposits and authentic."

Q Yes.

A That's what those are. If there was a hundred more deposits, I would have no way of knowing it.

MR. JOHNSTON: May I ask the reporter to read my question.

(Whereupon the record was read.)

THE WITNESS: That is true because that's what he told me.

THE COURT: Do I understand that the last entry on your check register for the calendar year 1979 was some time in August of '79?

THE WITNESS: That's true, your Honor.

THE COURT: And after that date, did you get any information at all from the bank or banks?

THE WITNESS: No, sir.

BY MR. JOHNSTON:

Q Mr. Wright, how many of these items did you finally determine or however you did it, did you decide represented fees that were deposited?

A Four.

Q And what's the total of those four items?

A $22,332.97.

Q All right, sir. Do you have a work paper of some kind that shows the addition of those four items?

A I have a tape where I had a tape on adding machine.

Q At that time?

A Yes.

Q I see. That's how you calculated the total figure?

A Yes.

Q And the tape was run by you, was it?

A Yes.

Q All right, sir. Now, I want to direct your attention to Government's Exhibit 31, if I may.

A I have it here.

Q You have 31?

A Yes.

Q Okay. I will put it on the easel here, the blowup of the first page of that exhibit which is in evidence as 31-A. And ask you what that document is?

A This is a document from Judge Claiborne listing his income and discussing the airplane sale and cost.

Q How many pages?

A Three pages.

Q You say it's discussing the airplane?

A He says he sold the airplane for $11,000, paid $11,500 for the airplane and in 1978, paid $11,500 for the plane in '78 and I computed then the personal loss of $500.

Q All right, sir. Is this document entirely in Judge Claiborne's handwriting?

A No.

Q Will you tell us, please, what portions of it are not in the judge's handwriting?

A The last two figures are mine and the personal loss is mine.

Q This is on the first page?

A Yes.

Q You are referring to the $11,000?

A No, the eleven five.

Q The eleven five. And the $500; is that right?

A Yes, uh-huh.

Q Those are in your handwriting?

A Yes. However, the eleven five to the left of that in the margin with the word is in Judge Claiborne's writing.

Q Yes. All right. Turn now if you will to the second page. Do you find anything that's not in Judge Claiborne's handwriting on that page?

A It appears that he is listing certain deductions and he noted a doctor he had paid $180. We determined that it was 205 and I changed that figure. That's the very first figure.

Q How did you determine that?

A In discussions with him.

Q Do you remember any more about it than that?

A No.

Q All right. What else is in your handwriting?

A After Dr. Irvin Cline, $319.50, that's my writing, and the total of the medical expense of $2359 is in my writing.

The March of Dimes figure of $25 is in my writing and the total of the donations of $525 is in my writing, and the very last figure, alimony, $21,000 is in my writing.

Q Anything else on the second page?

A I don't believe so, sir.

Q All right. How about the third and final page?

A Appears some of this is in my writing. Physician's Mutual Insurance, $218.90 is my writing. Mutual of Omaha, $85 is my writing. I believe that's all.

Q All right. Now, Mr. Wright, do you recall at some time before June 17, 1980, when the return was filed that you called Judge Claiborne by telephone to review with him the information you needed to prepare the return?

A Yes.

Q Do you have a present recollection of talking to him about that?

A Not particularly, no.

Q All right. Isn't it a fact that you called him to go over in some detail the information that you would need to prepare the return?

A Yes.

Q And isn't it a fact that the first item you asked him about was his income as a federal judge?

A Probably.

Q Don't you remember that he said to you, "You've already got that figure because You've got that W-2?"

A I don't recall that specifically, sir.

Q Isn't it a fact that you then left the phone or at least had reference to your own papers and you read back to him over the phone the figure, $54,199.92?

A I don't recall that specifically.

Q Don't you recall that the next item that you asked him about was his income from private law practice before he became a judge?

A I do not recall that.

Q I am looking at exhibit, Government's Exhibit 31, Mr. Wright. That may help to refresh your memory too.

A I see those items there.

Q Yes. Don't you remember that when you asked him about his fee income, he said to you again, "I've already sent you that information. You already have that."

MR. SHAW: Objection, your Honor. He already said he didn't remember the conversation.

THE COURT: He couldn't possibly remember the conversation. Members of the jury, don't pay any attention to the questions from the lawyers. Lawyers like to convey the impression sometimes that this is the answer to the question when they ask the question. What we are interested in is what comes from the mouth of the witness, not the question as such.

He's answered that he doesn't recall.

Q The figure of $22,332.87 is written in Judge Claiborne's handwriting, isn't it?

A Yes, it is.

Q He had to get that figure from you, did he not?

A That's right.

Q He didn't have it himself?

A No.

Q And that's the figure then that you put on the tax return, isn't it?

A That's right.

Q Now, you proceeded to prepare the tax return. Isn't it a fact that the Judge had already signed a form in blank for you for that year?

A I think he had dropped of the signed return, possibly, back in April.

Q For 1979?

A Yes. Whether we used it or not is the question.

Q And in any event, after you prepared the return, you never sat down with Judge Claiborne to review the facts and figures in the return, did you?

A Not to my knowledge.

THE COURT: Is this in April of '80 or April of '79?

THE WITNESS: The signing of the return and filing.

THE COURT: The blank?

THE WITNESS: April of '80.

THE COURT: April of '80. All right.

BY MR. JOHNSTON:

Q It wasn't your practice, was it, to sit down with the Judge over the years after you had prepared the return and go over it with him in any detail?

A That's right.

Q As a matter of fact, you never did that, did you?

A Very seldom and I don't recall if we ever did. That's right.

Q Do you recall talking with Judge Claiborne by telephone on the last day that he was, the day before he was sworn in as a Judge?

A What day was that?

Q That would be August 31st, 1979. He was sworn in on September 1st?

A Not specifically, no.

Q You have no specific recollection of that?

A No.

Q Don't you remember that Judge Claiborne placed a call to you on that day and told you that they were closing down the office and asked if you had any instructions for him on tax matters?

A I do not recall that.

Q Don't you recall saying that you needed to arrange to get the check stubs and receipt books from the office.

THE COURT: How could he recall it if he doesn't recall the conversation, Mr. Johnston?

MR. JOHNSTON: My thought is, your Honor, if I ask him about some of the details of the conversation it might refresh his recollection.

THE COURT: Yes, but he doesn't recall it. You are testifying in effect. That's what I have just told the jury. Don't pay any attention to Mr. Johnston's questions unless the witness ties it up and says, "Yes, I do recall."

BY MR. JOHNSTON:

Q You have no recollection of talking to the Judge at all on that final day in his office?

A No.

Q Do you recall seeing him that day?

A I was in his office. I have a note on my diary that I took an envelope to Ginny, his secretary. I do not recall speaking to Mr. Claiborne on that day.

Q Do you have that diary with you?

A No.

Q Have you used that to refresh your recollection?

A Yes.

Q Where is the diary?

A In Las Vegas.

Q Can you arrange to have that diary sent up here so that it could become available to us?

MR. SHAW: Objection, your Honor. He hasn't even said it refreshed his recollection. He is just quoting from the hearsay entry.

MR. JOHNSTON: His testimony was he used it to refresh his recollection.

THE COURT: Well, the diary is in Las Vegas. He was not requested to bring it here by either side. He can't move his office up here, gentlemen.

MR. JOHNSTON: I know, your Honor, but we had no information of the existence of a diary until this moment.

THE COURT: Well, you talked to him and the Government's talked to him and just because he now says something about a diary, we don't have it here. That's all.

MR. JOHNSTON: Well, at some point, I would like to be heard outside the presence of the jury on this point, your Honor.

THE WITNESS: I would further say that you said that I refreshed my memory from that. I called my office since I have been up here this time and asked one of my partners to look on that date and see what is in my diary.

BY MR. JOHNSTON:

Q All right. Did your partner tell you what was in the diary?

A Yes. He told me that in my writing I went, I took an envelope to Ginny in Harry Claiborne's office. That's what he related to me on the phone a couple days ago.

MR. JOHNSTON: Your Honor, I submit the rule is very clear that we are entitled to see that. I don't want to create a problem, but I want this witness to --

THE WITNESS: You can't have my entire diary because that has all my other documents and references there also.

THE COURT: We can exclude those as far as that's concerned. But the difficulty is that someone would have to pay for the transportation of somebody to fly up here and fly back to bring it here. No one's requested this gentleman to bring it previously. It's not his fault that he hasn't brought it.

MR. JOHNSTON: Your Honor, I suggest it doesn't require a courier to bring the diary. It can be sent. There are people that convey packages of this sort. You don't have to send a person along with it.

THE COURT: I can only say to you that what I intimated, if the diary of course would only be pertinent insofar as Judge Claiborne is concerned. There are other matters in that diary of course that I would have to review myself en camera and certainly clients of Mr. Wright need not be exposed to examination by a group of lawyers as to somebody else's business is concerned. We are only concerned with Judge Claiborne's phase of it.

I don't have it here, Mr. Johnston. We are trying a case. You had a perfect right to question him about any diary previously and apparently neither the Covernment nor you knew anything about his diary.

BY MR. JOHNSTON:

Q When did you phone to your office, Mr. Wright?

A Wednesday.

Q Wednesday of this week?

A Yes.

Q That's the day before yesterday?

A Yes. I said since I have been up here.

Q At whose suggestion did you do that?

A Um, my own.

Q It wasn't suggested to you by anyone?

A We were discussing a date and it occurred to me that there -- no, I will say possibly my secretary suggested that, that it would be in my -- she's the one that transribes my notes on to summary sheets and therefore she remembered that I possibly had made a note such as this, so I called my office and sure enough, there was a note that I just quoted to you.

Q With whom were you discussing the dates?

A Possibly Don Skelton.

Q Aren't you sure, Mr. Wright?

A Don Skelton.

Q And when you refer to your secretary, do you mean Mrs. Wright?

A Yes.

Q That's your wife?

A Yes.

MR. JOHNSTON: Well, I submit, your Honor, that we had no knowledge until this very moment that Mr. Wright had used a diary to refresh his recollection. He used it only two days ago, so we have had no contact with him.

THE COURT: I am not interested in that. If arrangements can be made to get the diary here at your expense, I will review it and point out to you any pertinent comments with respect to Judge Claiborne. I am not trying to hide any evidence; neither is this gentleman. Nobody's asked him for it.

BY MR. JOHNSTON:

Q Mr. Wright, is there someone in your office now in Las Vegas?

A Yes.

MR. SHAW: Your Honor, I would object to this inquiry further. The logistics of getting the diary, I'm sure Mr. Johnston can work out without the jury.

THE COURT: I sustain the objection. If

arrangements can be made then I will have a supboena issued to bring it, and if the arrangements can be made. I think you know what I mean by that. It's a long ways from here to Las Vegas.

THE WITNESS: Also, your Honor, I wouldn't like that diary out of my possession without having copied the entire thing before it leaves my possession.

THE COURT: Well, it's not going to get out of your possession, you can sit with me while I look it over to determine what may be pertinent to Judge Claiborne. I can assure you that I don't know any of your clients. In fact, I don't know anybody in Las Vegas except you and Mr. Goodman and Judge Claiborne now. I didn't know them beforehand.

THE WITNESS: The only thing I am suggesting is if it's going to be transported from Las Vegas to here, well, if I did it, of course, then it would be in my possession. If I don't do it personally, I would want it copied before it left my office. I don't care who brings it up here or how it gets here.

MR. JOHNSTON: That doesn't present any problem, Mr. Wright. You have a copy machine, don't you?

THE WITNESS: The only problem it takes is time and money.

THE COURT: Let's not talk anymore about it. We will take this up later and let's go on with the questioning that may be pertinent. You are not entitled to see everything that a particular witness may say is in a diary.

MR. JOHNSTON: I am not interested in everything, your Honor, just the part he used to refresh his recollection.

THE COURT: I understand that, but we don't have the diary. Go on with the questions.

BY MR. JOHNSTON:

Q Mr. Wright, do you recall any conversation with Judge Claiborne on or about August 31st, the day before he was sworn in as a judge, about how much income taxes he might owe for 1977 that was unpaid?

A No.

Q Do you recall any conversation with him at any time in that period about what he owed for 1977?

A No.

Q You don't remember his asking you how much he owed for 1979?

MR. SHAW: Objection. Again, your Honor, he doesn't remember one side of the conversation. He is not going to remember the other.

THE COURT: He said he has no recollection.

/////

BY MR. JOHNSTON:

Q Do you remember any conversation in which Judge Claiborne told you that he had to go down to the Horseshoe and get some money to put in the bank in order to pay the 19 --

MR. SHAW: Objection, your Honor.

THE WITNESS: No.

MR. SHAW: I withdraw the objection.

BY MR. JOHNSTON:

Q You testified a moment ago, I think, Mr. Wright, that you -- do you remember delivering an envelope to Judge Claiborne's office; is that right?

A Yes.

Q What was in the envelope?

A I don't know.

Q You do remember delivering it?

A No. That is a document related to me on the phone with my partner and right this minute I do not recall delivering that. According to the note, I simply dropped off an envelope to her.

Q I see. But you don't have any present recollection of that?

A No.

Q You don't remember any discussion about paying the 1977 tax?

A I sure don't.

Q Do you have any recollection of picking up the records at the office of Judge Claiborne on September 1st of, the day he was going to be sworn in?

A No.

Q You don't remember being down there in the morning?

A No.

Q You remember any conversation with him at all on that day?

A No.

Q All right. Will you direct your attention please to Exhibit 25-A. I am not sure he has that. I am going to hand you, Mr. Wright, Government's Exhibit 25. I am placing on the tripod the Government's blowup of that exhibit.

First of all, Mr. Wright, will you tell us what this is?

A A work paper with certain income, certain tax information relative to preparing a return.

Q Was this prepared by you?

A Yes.

Q The entire thing?

A No.

Q All right. Will you tell us which portions you prepared, please?

A The top portion all the way down to add depreciation expense and the figure $8300.

Q Is that your figure?

A $8300 is not my figure.

Q That is not your figure.

A No, that is an accountant in my office.

Q Who is that?

A Ken Swanson.

Q Will you continue please.

A Interest income appears, the wording "interest income" appears to be my writing, but the figure is not and I assume that's Ken swanson's. I think it is.

All right. The word "expense" below that alimony, $1750 per month, it doesn't say per month but equals 21,000 is my writing. The word "interest" is my writing. Everything after that appears to be someone else's writing. And it appears to be my accountant's, Ken Swanson.

Q When was this prepared?

A It would be some time in '79 when we were working on the '78 return.

Q There are some numbers written down here diagonally, 35,000, 40,000. What does that signify?

A It doesn't mean anything to me.

Q Was this sheet used in any way in the preparation of the return?

THE COURT: You are talking now about the 1978 return?

MR. JOHNSTON: Yes, your Honor. I just want to know what to use, what the purpose of the work sheet was.

THE COURT: Well, the only relative thing to me right at this minute is that we are excluding the $75,000 loan from the deposit that was not income.

BY MR. JOHNSTON:

Q Is the word "loan" written by you?

A Yes.

Q All right, sir.

In any event, at the top of this document there is a notation beginning "not income." Is that in your handwriting?

A Yes, it is.

Q Would you read that, please?

A It's "not income, borrowed to pay tax for 1977."

Q Do you have any present recollection of actually writing that on the work paper?

A No.

Q Do you have any present recollection of Judge Claiborne ever telling you that he had borrowed $75,000?

A No.

Q All you know about a $75,000 loan is the fact that you made a notation on this work paper; isn't that so?

A And other documents where it was also talked about and written.

Q Do you have any other knowledge that there was a loan besides the fact that you wrote this notation on this work paper?

A Not particularly.

Q Did you ever ask Judge Claiborne who the lender was?

A No.

Q Did you ever see any documentary evidence of the loan?

A No.

Q You didn't see a promissory note, did you?

A No.

Q Wasn't it the Judge's longstanding practice over the years when you were acting as his accountant, every time he borrowed money he gave you complete information about the loan?

A He didn't borrow money very often.

Q No, sir, but when he did, he gave you information, didn't he?

A I don't recall.

Q You don't recall his ever giving you copies of notes when he borrowed it?

A No.

Q Did you ever see -- you have never seen any documentation of any kind about a $75,000 loan, have you?

A No.

Q Never seen a note?

A No.

Q Never seen any evidence of repayment of a $75,000 loan?

A Nope.

Q Never see any evidence of payment of interest on a loan like that?

A No.

Q Did you ask him about interest?

A I asked him about interest.

Q Did you ask him about interest on a $75,000 loan?

A I don't specifically recall that.

Q You prepared the returns for '78 and '79, didn't you?

A Yes.

Q There was no deduction placed in either of those returns for interest on such a loan, is there?

A No.

Q You don't recall whether you ever asked him about interest on such a loan?

A We asked him for all of his income and expenses.

Q Right. He never gave you any information about paying interest on a $75,000 loan, did he?

A That's right.

MR. JOHNSTON: May I have just a minute.

BY MR. JOHNSTON:

Q Mr. Wright, it's a fact, is it not, that using the method that you used to identify the Judge's fee income namely using bank deposits, this did result on occasion, including his income items that were not fee income, did they?

A Yes.

Q That happened?

A Yes.

Q Isn't it a fact also that Judge Claiborne's standing instruction to you over the years were that if there was any question about a tax matter, you should resolve it in favor of the Internal Revenue Service?

A That's right.

Q And the Judge never at any time asked you to do anything that you thought was improper or doubtful, did he?

A That's right.

MR. JOHNSTON: Thank you, no further questions.

THE COURT: Redirect?

MR. JOHNSON: May I have just a moment. I will collect my papers here.

REDIRECT EXAMINATION

BY MR. SHAW:

Q Mr. Wright, if Judge Claiborne was intentionally concealing income from you and not telling you about where his fees were coming from, you wouldn't have any way of knowing whether he was concealing that from you or not, would you?

A No.

Q And if he was incorrectly reporting his total fees to you, you wouldn't have any way of knowing that either, would you?

MR. JOHNSTON: Objection. Assumes a fact not in evidence. He didn't report his total fees.

MR. SHAW: There's plenty of evidence, your Honor.

THE COURT: There is some evidence that certain items have not been reported for 1979.

MR. JOHNSTON: The evidence is that Mr. Wright determined the fees from the bank deposits.

THE COURT: I think it's entirely proper to get to the jury. Perhaps defects if any in a system using only bank deposits. Go ahead, Mr. Shaw.

BY MR. SHAW:

Q You never determined from bank deposits or anywhere else other than Harry Claiborne personally what his income was for 1979, did you?

A No.

Q You would have known of any way that you could have determined what was fees in any way other than speaking with Judge Claiborne?

MR. JOHNSTON: Objection as calling for speculation.

MR. SHAW: I think he can answer that.

THE COURT: I will permit him to answer.

THE WITNESS: I wouldn't know how. It's like going through every scrap of paper in his office and home, you know. I don't know how you would do it.

BY MR. SHAW:

Q Based upon the information that he provided you and the documents that were sent to you at his request from the banks and from his office, you would not be able to determine what fees he had earned from 1979?

MR. JOHNSTON: Objected to as leading.

THE WITNESS: No.

MR. JOHNSTON: May the answer be stricken, your Honor.

THE COURT: Is this cross-examination?

MR. SHAW: It's redirect based upon items brought up just recently by Mr. Johnston.

THE COURT: I thought that you -- I think we should stick to no leading questions.

MR. SHAW: Very well, your Honor.

/////

BY MR. SHAW:

Q Do you have No. 18 in front of you, Mr. Wright?

I am showing you a document, Government's Exhibit No. 18, which appears to have three checks on the right side with a deposit slip; is that correct?

A Yes.

Q And were you asked some questions by Mr. Johnston concerning those items?

A Yes.

Q Did Judge Claiborne ever show you those checks at the time you were preparing the '79 return?

A No.

Q You were aware of a deposit -- were you aware of a deposit in the total amount of those checks?

A That's one of the deposits Judge Claiborne gave me initially in the $45,000 total fee. This is one of the deposits.

Q But did you ever have any knowledge of what that deposit was made up of?

A (No response.)

Q Other than what Judge Claiborne had told you orally?

A No. No.

Q Do you have No. 28 in front of you?

THE COURT: Does Exhibit 18 refer to the three tax checks or what apparently are tax checks?

THE WITNESS: No, sir. It's a total deposit of $4300 and these three checks make that total deposit.

THE COURT: Yes, but who are the checks payable to?

THE WITNESS: Harry Claiborne, Harry Claiborne, Harry Claiborne.

THE COURT: From whom?

THE WITNESS: W. W. Galloway, United States Treasury, United States Treasury.

THE COURT: Well, that's what I call the three tax checks.

BY MR. SHAW:

Q Did you have any information about the source of what went into that $4300 deposit?

A No.

Q Showing you Exhibit No. 28; is that in front of you?

A Yes.

Q Do you see the total figure of 43 -- roughly $4300 on Exhibit 28?

A Yes.

Q And the word "fec" is written next to it, is it not?

A Yes.

Q Who gave you the information to include that word there?

A Judge Claiborne.

Q You testified on cross-examination, I believe, that the column of numbers that were placed there by Judge Claiborne were incorrectly totaled; is that correct?

A That's true.

Q Were they incorrectly totaled before or after you received this letter from Judge Claiborne?

A Before.

Q So you did not make that error in adding; is that correct?

A No.

Q Now, I believe you were also asked questions by Mr. Johnston concerning the source of the roughly $78,000 figure for '78 income that you told the finance companies about; is that correct?

A Yes.

Q Now, I am showing you what's been marked as Government's Exhibit No. 2, which is the 1978 income tax return of Judge Claiborne.

May I ask you whether or not you arrived at that figure merely by subtracting the salary income from the total income?

MR. JOHNSTON: Objected to as leading.

MR. SHAW: I will rephrase the question.

THE COURT: What is the relevancy of this? We are in the '78 return now.

MR. SHAW: Well, the question was raised on cross-examination about how it was that Mr. Wright was able to obtain the $78,000 figure for the '78 income that he told Stanwell Mortgage about.

THE COURT: All right, gentlemen. I will permit that. That appears to be correct.

BY MR. SHAW:

Q Now, do you have No. 30 in front of you, Mr. Wright?

A Yes.

Q Now, directing your attention to the bottom of Exhibit No. 30 where you arrive at a 1979 balance due of roughly $16,000, do you see that?

A Yes.

Q Would that be the balance due towards the payment of the '79 taxes for the purposes of the extension that was being filed; is that true?

Next to it is an $8,000 figure; is that right?

A Yes.

Q Was the $8,000 sent to the IRS at that time?

A Yes.

Q Do you know whether or not on the original, the $8,000 was written in a different ink than the $16,000 or with a different pen?

A I don't know.

Q Did you not testify on cross that it appeared from the copy that it was written in different?

A Yes, it appears to be.

MR. JOHNSTON: Objected to as leading.

MR. SHAW: I was directing his attention to what he was testifying to earlier.

THE COURT: I don't know the basis.

MR. SHAW: The question was did he not testify on cross-examination that from viewing this copy he believed the $16,000 and the $8,000 figure were in two different pens.

THE WITNESS: That's true.

THE COURT: All right. I will permit it.

BY MR. SHAW:

Q Do you know how much time or what events happened after the $16,000 figure was written in there, what events occurred to cause you to put the $8,000 figure in there?

A The discussion with Judge Claiborne as to what his total tax might be. and the fact that it might be less than the 16,000 that we computed.

Q So you discussed with Judge Claiborne this computation?

A Yes.

THE COURT: Do you remember what interest the Government was charging a late taxpayer that did not pay in full by April the 15th of, say, 1980, when the return was due?

THE WITNESS: 1980, probably around 20 percent. Sixteen to twenty percent.

THE COURT: They had raised the interest rate then?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. SHAW:

Q Mr. Wright, you testified I believe in response to Mr. Johnston's questions that you had spoken with either him or with Judge Claiborne's attorneys in roughly March of this year; is that right?

A Yes.

Q You also spoke with some of his attorneys, one or more of his attorneys on other occasions, did you not?

A Yes.

Q And do you recall about when those conversations would have occurred?

A Not specifically, except one from Mr. Raggio and Mr. Goodman came to my office relative to the April 11th letter.

Q That's when they showed you the Defendant's Exhibit No. 1 letter?

A Yes.

Q Had you ever seen that April 11th, 1980, letter before they showed it to you in November of 1983?

A Not to my knowledge.

Q Do you still have with you the original of that document that Mr. Johnston had asked you to bring?

A Yes.

Q May I see that?

MR. SHAW: Your Honor, we would move to substitute this for the copy that's in evidence.

THE COURT: Make it the same exhibit number, keep the copy in because we have had reference to it. That's -- what's this?

MR. SHAW: It would be No. 28, I believe, your Honor.

THE COURT: Well, this will be 28-B then, won't it?

MR. SHAW: Very well. Yes.

THE COURT: 38-B, ladies and gentlemen of the jury, is apparently the original of the document that you have previously seen a copy of and which has been blown up, and the blowup is 28-A.

THE WITNESS: I am not sure that I have a retained copy in my file of that document, sir.

MR. SHAW: We will make you a copy for your file, Mr. Wright.

Now, on that exhibit, No. 28, you mentioned on cross-examination that there were four deposits that were determined to be fees on here; is that correct?

THE WITNESS: That's true.

BY MR. SHAW:

Q How did you determine that those four deposits represented the fees for Judge Claiborne during 1979?

A Judge Claiborne identified them for me.

Q Now, you testified at one point, Mr. Wright, that Judge Claiborne must have gotten, must later have gotten this $22,000 figure from you; is that right?

A Yes.

Q Well, the two of you went over these deposits together. You have testified. Is it possible that he could have retained a copy or at least the information about the four deposits that were fees?

MR. JOHNSTON: Objected to as calling for speculation.

THE COURT: Unless he knows. Anything is possible. But if he knows, he can answer it.

Do you know?

THE WITNESS: No.

BY MR. SHAW:

Q Do you have any reason to believe that he did not retain a copy of what deposits he was telling you were his fees?

A No.

Q Now, you have made a reference to a note in your diary that was read to you by your partner in Las Vegas?

A Yes.

Q And did the note in your diary make any reference to any conversation that you had or any meeting that you had with Judge Claiborne on August 31st, 1978?

A No.

Q Merely said that you delivered an envelope to his secretary; is that right?

A That's true

Q In the normal course of business and the way that you maintained that diary, would it have been the usual practice for you to have mentioned on there that you had a meeting with Judge Claiborne if you in fact had had a meeting with Judge Claiborne?

A Yes.

MR. SHAW: That's all. Thank you.

THE COURT: Please stick now to the questions brought out by Mr. Shaw.

MR. JOHNSTON: I think I may have only one question, your Honor.

RECROSS-EXAMINATION

BY MR. JOHNSTON:

Q Mr. Wright, you testified in answer to some of Mr. Shaw's questions as well as to other questions earlier in in your testimony about numerous things that Judge Claiborne told you or information that you got from Judge Claiborne. Would it be fair to say that as you sit there at this moment, you have no present recollection in your mind of any of these specific conversations?

A That's true.

MR. JOHNSTON: Thank you.

MR. SHAW: Nothing further.

THE COURT: All right. Thank you, Mr. Wright. Now, I cannot excuse you because we have to resolve another matter.

(Whereupon the witness was excused temporarily.)

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(End of previous transcript.)

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THE COURT: Who are you calling as your next witness, Mr. Shaw?

MR. HENDRICKS: Mrs. Wright, your Honor.

THE COURT: Well, he wouldn't be leaving anyway if that be the case.

(Whereupon the next witness was duly sworn.)

MR. HENDRICKS: May I have a moment, your Honor, while the clerk collects some records.

CONSTANCE WRIGHT, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. HENDRICKS:

Q Could you state your name, please, for us?

A My name is Constance WRight.

Q And what is your address, ma'am?

A 1924 East Oakey Boulevard, Las Vegas, Nevada.

Q How are you employed or how were you employed in the years 1979 and 1980?

A As a secretary.

Q To whom?

A Joseph C. Wright.

Q Is he the gentleman who just left the courtroom?

A Yes.

Q What is your relationship to him?

A He is my husband.

Q And you are his secretary?

A Yes.

Q Could you tell us what your duties and responsibilities were in the office?

A Yes. To type all correspondence. To post books, make telephone calls. The usual thing a secretary does.

Q Okay. And as of the year 1980, Mrs. Wright, had you done work in connection with your husband's accounting representation of Harry E. Claiborne?

A Before 1980.

Q For how many years prior to that time?

A Thirty years.

Q Okay. During that period of thirty years, have you had occasion --

THE COURT: Now, the question, Mrs. Wright, was as of the year 1980. That does not mean the tax year. That means the actual calendar year. Did you do any work for Judge Claiborne in 1980 that might relate to 1979?

THE WITNESS: Yes, sir, I did.

THE COURT: All right.

BY MR. HENDRICKS:

Q You had done work for many years prior to that time?

A Yes.

Q During that period of time, that thirty year period, did you have occasion to see Harry E. Claiborne's handwriting on documents that would come from him as a taxpayer to your husband's office?

A Yes.

Q And would you recognize that handwriting when you saw it?

A Yes, I would.

Q Let me show you, if I might give you a pile of documents. Perhaps we can go through them more quickly that way.

Would you first, I believe the first document is Government's proposed Exhibit No. 1. Would you turn to the signature which purports to be that of Harry E. Claiborne on Page 2 and tell us whether you can identify that?

A Yes, sir, it's Judge Claiborne's signature.

Q And now passing on to the proposed Government's Exhibit No. 2, would you do the same thing?

A Yes, that's Judge Claiborne's signature.

Q On the signature line of that tax return?

A Yes.

Q Now, please would you look at Government's Exhibit No. 3 in evidence. Addressing your attention to the same second page signature line.

A Yes, that's Judge Claiborne's signature.

Q Would you now, please -- do you have Government's Exhibit 4 there?

A Yes, that's Judge Claiborne's signature.

Q All right. And Government's Exhibit 5, which I believe is the 1980 income tax return, do you recognize Judge Claiborne's signature on that document?

A Yes, sir, that's Judge Claiborne's signature.

Q Now, would you please look at Government's Exhibit No. 6. I believe you will see, if I might approach the witness briefly, a number of checks?

A Yes.

Q Could you briefly hold that exhibit up to the jury just so they can see what you are working with?

A (Complies.)

Q Okay. Would you please look at the back of those checks, all of those checks and tell us whether you can identify Judge Claiborne's endorsement on the checks.

A Yes, they are Judge Claiborne's signature on all the checks.

Q And now, ma'am, please, Government's Exhibit 7. I believe you will see two checks?

A Yes.

Q Would you please look at the backs of the checks and tell us whether you can identify Judge Claiborne's signature on those two checks from James Brown?

A Yes. Both checks are Judge Claiborne's signature.

Q Okay. Now, would you pass on please to, I believe, Government's Exhibit 9 should be the next document. Those are five cashier's checks in each of the amount of $1,000, with the purchaser identified as one Annette Quintana. Would you look at the backs of those checks and tell us whether the endorsements appear to be those of Judge Claiborne?

A Yes, they are all Judge Claiborne's signatures on all the checks.

Q Thank you, ma'am.

Now, would you look at Government's Exhibit 10. I believe you will note a letter which is in handwriting beginning "Dear Frank" and signed -- excuse me.

A That's right.

Q Can you identify the handwriting in the salutation and body and the signature of that letter?

A Yes. To the best of my knowledge, that's Judge Claiborne's writing and signature.

Q Okay. Now, would you look at the next document which should be Government's Exhibit No. 11. There is a check there?

A Yes. For $37,500.

Q Okay.

A Did you want me to show the jury?

Q Would you please. Thank you.

Can you identify the endorsement on that check?

A Yes. That's Judge Claiborne's signature.

Q Thank you. Now, would you look at I believe Government's

Exhibit 13 should be the next?

A Yes.

THE COURT: What number?

MR. HENDRICKS: Just for purposes of identification of the jury, tell us what that check is?

THE WITNESS: It is a check to Harry E. Claiborne in the amount of $42,452.34 and signed by Peter Echeverria.

BY MR. HENDRICKS:

Q Would you look at the back of that check and tell the ladies and gentlemen of the jury whether you recognize the endorsement?

A Yes, sir, that's the endorsement of Judge Claiborne.

Q And I believe Government's Exhibit 15 is the next. It should be a signature card.

A Yes. Bank signature card.

Q Could you please look at the signature block of the individual whose account is evidenced by the card and tell us whether you can identify that signature?

A It's very light, but I can see the "H" and the "C", yes. It's Judge Claiborne's signature.

Q Thank you. Now, the next document that you have should be Government's Exhibit 28?

A Yes.

Q Would you take a look at that document and tell us whether you recognize the handwriting on it?

A Yes. This is Judge Claiborne's handwriting and his signature.

Q Would you look at Government's Exhibit 31. Would you briefly show that to the jury so they see what that is.

A (Complies.)

Q Do you recognize that the three pages of Government's Exhibit 31, in large part contains the handwriting of Judge Claiborne?

A In large part, yes, and there is also some of Mr. Wright's writing on there too.

Q You mean Joseph Wright?

A Joseph Wright's writing.

Q Now, would you pass on to Government's Exhibit 32.

A (Complies.)

Q There is a signature card there, a bank signature card. Tell us, please, can you identify that signature?

A Yes. It's Judge Claiborne's signature.

Q Thank you. Now, the next document should be Government's Exhibit 34, a check. Would you look at the back of the check. Tell us, please, if you will, for purposes of identification what that check is?

A This little tiny check here?

A The little tiny check.

A It's a check to Internal Revenue Service in the amount of, looks like $76,443.16, and it is signed by Judge Harry

Claiborne.

Q All right. Do you see the date on that check?

A 8/31/78, as well as I can read it.

Q Was that Government's Exhibit 34? The previous one?

A Yes.

Q Okay. Is the next one Government's Exhibit 37?

A Uh-huh.

Q Would you please, another photocopy of a check, could you tell us for purposes of identification what that check is?

A Yes. It's a check paid to the order of Internal Revenue Service in the amount of $20,817.59 and it is signed by Judge Harry Claiborne.

Q You recognize the signature?

A Yes, sir.

Q Now, would you please look at Government's Exhibit 38.

For purposes of identification, if you haven't already, hold that up so the jury can see.

A I did. This is a check from the U. S. Treasury pay to the order of Harry E. Claiborne in the amount of $44,256.

Q Would you please look at the back of the check and tell us whether there is an endorsement and if so, whether you recognize the signature?

A Yes, sir. It's Judge Harry Claiborne's signature.

Q Now, the next document should be Government's Exhibit 39.

If you would address your attention to the letter in Government's Exhibit 39 dated the 20th of June, 1979, and also a signature on the second page of the ethics statement, the other document there.

A This one?

Q Do you recognize those two signatures?

A I recognize the signature on the letter which is dated June 20th, 1979, to the Honorable Edward Alan Tamm. I recognize the signature on this paper here.

Q All right. As what?

A Judge Claiborne's signature.

Q Thank you. Next to last, Government's Exhibit 40, I believe you have in front of you?

A Yes, sir.

Q Could you tell us whether on the second page of that statement you recognize the signature of Judge Claiborne?

A Yes, I recognize the signature of Judge Harry Claiborne on the second page.

Q And finally, Exhibit 41, do you have that in front of you?

Would you please first address your attention to a letter which is dated the 21st day of October, 1981, and tell us whether you recognize the signature on that letter?

A Yes, I recognize the signature of Judge Harry Claiborne on Page 4 of the letter dated October 21st, 1981.

Q There is also a letter dated the 31st day of March, 1983. Could you tell us whether you can locate that and if so, does it have a signature and is it Judge Claiborne's?

A March 31st, 1983, yes. A letter to the Honorable Edward Alan Tamm and the signature is Judge Harry Claiborne's.

Q Finally, could you tell us whether you recognize, were there two attachments to that letter?

A Yes.

Q And do they contain the signature of Judge Claiborne?

A Yes, they both contain the signature of Judge Harry Claiborne.

THE COURT: You identified this as a letter to the Honorable Edward Tamm from Judge Claiborne?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. HENDRICKS:

Q Mrs. Wright, during the years 1979 --

THE COURT: If you are going into another field now, I think we will take a brief break at this time.

Members of the jury, take the midafternoon recess.

(Whereupon the jury was excused.)

THE COURT: During the recess period, will the Government and Mr. Johnston try to get together with Mr.

Wright and see if some solution can be worked out at the expense of Mr. Johnston with respect to this diary, if it can be worked out. I would like to start getting it shipped up here if that be the case. I don't know what can be done. See if you can work it out yourselves. If not, I will issue a subpoena duces tecum.

Court will be in recess for 15 minutes.

(Whereupon a recess was taken.)

THE COURT: Gentlemen, was any conclusion arrived at with respect to Mr. Wright?

MR. JOHNSTON: We, your Honor, I think we resolved the problem. Mr. Wright agreed to telephone his office, have his partner make a photocopy of the one page where there appears something that was read to him, and mail that up to Mr. Shaw, and I have assured him that we have no interest in any of his other clients or anything else. We just want to see what it was that was read to him over the phone that refreshed his recollection. So I assume that that will be received before the trial concludes and we will have a chance to look at it and see whether we wish to make any further use of it.

THE COURT: Better send it up by Federal Express, which involves a $10 item.

I cannot guarantee delivery of the United States mails. I know from Virginia Beach to Norfolk, Virginia, which is 18 miles, it sometimes takes six days for a letter to get there.

MR. JOHNSTON: I appreciate the Court's suggestion. If I may be excused for a minute, I will see if he's still out there. I suspect he may have left by now, your Honor.

No. I am sure he's still here. May I go out and speak to him, your Honor. I will make that suggestion.

Your Honor, what we have suggested to him now is that if he will get the copy of the page to Mr. Goodman's office, he will get it up here to us.

THE COURT: All right. All right, Mrs. Wright is on the stand. She may resume the stand.

Call the jury, if you will, Mr. Marshal.

(The following proceedings were held in open court before the jury.)

THE COURT: All jurors are present. All right, Mr. Hendricks, you may proceed.

DIRECT EXAMINATION (Resumed)

BY MR. HENDRICKS:

Q Mrs. Wright, let me ask you to address your attention to the period from 1979 to 1981. What if any responsibility, ma'am, did you have for the maintenance of records regarding tax clients in your firm?

A Well, it was my job to post all the detail work, all the check register -- are you talking about Judge Claiborne's?

Not the entries, I am just talking now about maintaining the physical documents.

A I have files.

Q Okay. And who maintains them?

A I do.

Q Where are they maintained?

A Formerly when we had our old office, they were right next to my desk in the steel file. Now, in our new office we have a file center room where all files are kept.

Q Now, what degree of care do you exercise in maintaining these kind of tax records?

A The very best that I know how.

Q Why is that?

A Well, I see that nothing is missing from the files, all the returns are placed in the files, copies of returns and all the backup work that goes to making up a tax return in case we get an audit.

Q Did you maintain tax files for Harry E. Claiborne?

A I certainly did.

Q During the period of time you worked on his accounts?

A He was my very own account. I worked on it especially.

Q Okay. What was your practice, Mrs. Wright, when the practice that you used with your firm when you received a tax related document from a client?

A To put it in the file, or make a copy of it and return the original to the client and keep the copy.

Q Did you ever throw away a document?

A No. I was instructed not to throw anything away, ever.

Q Why is that?

A Well, we need all documents, especially when we are doing tax work because we may get an audit and we have to have all the backup work to substantiate what's put on the return.

Q And what was your practice with respect to the maintenance of your files when you sent a client a document from your firm?

A From our firm?

Q Yes, ma'am.

A To make a copy of it for the file for the client's file.

Q Why would you do that?

A We have to have a copy of everything we do. We are copy crazy.

Q Now, let me show you a document which has been marked for identification as Defense Exhibit No. 1. Let me ask you to take a look at that and ask you to tell us when the first time was that you recall having seen that document?

MR. GOODMAN: Objection. That's not in evidence, your Honor.

THE COURT: Defendant's Exhibit No. 1 is the 1977 return.

MR. GOODMAN: No, Defendant's 1 is the April 11th, 1980, letter.

THE COURT: I will permit her to testify when she first saw it.

THE WITNESS: Mr. Wright gave it to me and told me to search Judge Claiborne's files very thoroughly to find the original.

MR. GOODMAN: Objection, hearsay.

THE COURT: Don't tell what Mr. Wright said, what your husband said. Did you start to say what Judge Claiborne said?

THE WITNESS: No, I didn't.

THE COURT: All right.

BY MR. HENDRICKS:

Q Mrs. Wright --

A You asked me when I first saw this document, and I am trying to tell you.

Q If you could just relate the approximate date.

A It was the first time that Mr. Goodman came to our office.

Q All right.

A I don't remember that date.

Q Addressing your attention to the fall of 1983,
was it about that time?

A I guess. Yes.

Q Had you ever seen that document before, to the best
of your recollection?

A I don't really remember. I am sorry. I don't.

Q After that time, ma'am, did you have occasion to
conduct a search of your files?

A Yes.

Q At whose request did you conduct the search?

A Mr. Wright's. He told me to go --

MR. GOODMAN: Objection. Hearsay.

THE COURT: She searched it at the request of
Mr. Wright. That's not hearsay.

BY MR. HENDRICKS:

Q Were you able to locate any such document?

A No.

Q A copy or the original?

A No.

Q To the best of your information and belief, Mrs.
Wright, had that document ever been in your files
before that time?

MR. GOODMAN: Objection as calling for
speculation.

MR. HENDRICKS: I withdraw it. No further questions.

MR. GOODMAN: I ask the jury be admonished to disregard the question.

THE COURT: Well, the question was never finished.

MR. GOODMAN: Well, whatever part of it.

CROSS-EXAMINATION

BY MR. GOODMAN:

Q Mrs. Wright, you have been working for your husband for what, some thirty years?

A More.

Q Working as his secretary?

A I'd say forty.

Q And participating in various aspects of the day-to-day business office.

A That's correct.

Q Are you there on a full-time basis?

A Yes. I would say.

Q Did there come a time that you had an office on Commerce Street?

A Yes.

Q What was the address?

A 1209 South Commerce.

Q And what were the years that your business location was on Commerce Street?

A Well, we moved from there in 1982.

Q In 1982?

A '82, I think, and we had been there for about 15 or 16 years before that.

Q So it would be fair to state that 15 years before '82, the principle place of business was on Commerce?

A Yes.

Q And then after 1982, you moved to an office in the Atrium; is that right?

A That's right.

Q Completely different part of town?

A Yes.

Q Now, during the course of the move, did you participate in moving the documents from one location to another?

A I personally?

Q Yes.

A No, sir.

Q Was this done by professional movers?

A No, by our office crew.

Q By your office crew. Isn't it a fact, ma'am, that you discovered that certain documents were missing after the move?

A I don't know.

Q How long did the move take?

A About a week, I would say.

Q Was that every day during this period of a week?

A Yes.

Q That office personnel would transport documents from the Commerce business location to the Atrium business location?

A Yes. Furniture, files.

Q Did you transport the files in boxes?

A Yes.

Q And the boxes -- how many various employees did you have engaging in the move?

A Well, at that time we merged with another accountant, so he had seven or eight employees and we had three.

Q So there were an awful lot -- was the move simultaneous with both accounting firms?

A Yes.

Q So in other words, the other accountant staff was bringing documents in while your staff was brining documents in?

A That's right.

Q To the same location?

A That's right.

Q Did they take about a week to transport the documents into --

A Well, maybe not a whole week. I don't think it took that long.

Q And then after the documents were there, you sorted them out and put them in respective files?

A We put them in a central filing system.

Q I would like to call your attention to the physical layout of the office as it existed on April the 11th of 1980. That would be at Commerce Street; is that correct?

A Yes.

Q Could you describe to the ladies and gentlemen of the jury, if I were a client who was coming into the office, was the office on a one story building and on the first floor?

A Yes.

Q Would I enter from Commerce Street?

A Yes.

Q Would I have to knock or could I just open the door and walk in?

A You could open the door and come in.

Q What was the first thing that I would see when I walked in?

A You would see a reception area right here.

Q And was the secretary at the reception area?

A Yes. We had a girl who took telephone calls and was the receptionist.

Q Was that someone other than yourself?

A Yes.

Q What was that person's name?
A At that time and what period was that?
Q April the 11th of 1980?
A I think at that time, we had a young girl, about 18 years old.
Q And she was sitting to greet the clients as they entered?
A She would be the first person you would see when you walked into the building.
Q And was Mr. Wright the only accountant who was working on the premises at that time?
A No, sir.
Q How many accountants were there?
A There were three.
Q Was she working as a receptionist for all three?
A Yes.
Q And if I wanted to leave an envelope or a document for any of those persons, would I leave it with her?
A You could, yes.
Q And where was your office?
A Right to the very right. As you walk in the door, mine was the first office.
Q Was there any type of a separation between where the receptionist was and where your office was?
A No, there was an open door.

Q If I were a client, would I be able to walk directly to you and bypass the receptionist?

A Yes. Or I would see who was in there because I could see from where I was sitting.

Q And then -- where was Mr. Wright's office?

A In the back.

Q Would you be able to see Mr. Wright's office from where the client came in when he first addressed the receptionist.

A You could see Mr. Wright's office, but you couldn't see his desk. You couldn't see him sitting there for instance.

Q Now, did the receptionist handle any files?

A No.

Q All right. You would be the one who would handle the files?

A Our files, yes.

Q Now, if Mr. Wright were preparing some documents or reviewing some documents on behalf of a client, would you then bring him the file?

A Yes. He would ask me for the file.

Q For example, let's take as an example, on April the 11th of 1980, if Mr. Wright were having some type of communication with Judge Claiborne and wanted to make reference to a file, he would say -- did he call you

Constance?

A Connie.

Q "Connie, will you please bring the Claiborne file to me"?

A Yes.

Q And then would you then take it to his office?

A Yes.

Q And you would leave it with him, would you not?

A Yes.

Q How would that file be retrieved?

A He would give it to me to put back in the file or he would put it back himself.

Q Okay. So it was either one of those methods?

A Yes.

Q Were there ever occasions when he himself would go and get a file?

A Yes.

MR. GOODMAN: Court's indulgence, please.

I have nothing further -- pardon me, your Honor.

Nothing further, your Honor.

REDIRECT EXAMINATION

BY MR. HENDRICKS:

Q Mrs. Wright, what is the age of receptionist that you have just talked about on cross-examination?

A At that time, she was about 18 years old.

MR. HENDRICKS: Thank you very much. That's all I have, your Honor.

THE COURT: Thank you, Mrs. Wright. You may be excused.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

DAVID SETTLE, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. HENDRICKS:

Q Good afternoon. Could you tell us your name, please?

A David Settle.

Q And your address?

A 5217 Castle Way, Las Vegas.

Q And your occupation?

A Assistant vice president, operations officer for First Interstate Bank of Nevada.

Q Now, in that regard, Mr. Settle, do you have anything to do with and are you knowledgeable about the maintenance of records by your bank in the normal course of its operation?

A Yes, sir.

Q Could you tell us whether your bank, the First Interstate Bank, has any relationship to the First National Bank of Nevada?

A We changed our name to First Interstate Bank of Nevada in June of '81.

Q Okay. So is it, would it be fair to say that some of the records that you maintained are maintained under the name of First National Bank of Nevada?

A Yes, sir.

Q Okay. Now, let me show you what's been marked for identification as Government's Exhibit 32, if I might, and leave with you certain other documents which I am going to show you in just a moment. The first addressing your attention to Government's Exhibit 32, can you tell the ladies and gentlemen of the jury and his Honor what that document is?

A This is a signature card for the account of Harry E. Claiborne.

Q All right. Is the Government's Exhibit 32 a document -- true and correct copy of the document maintained in the normal course of your bank's operations?

A Yes, it is.

MR. HENDRICKS: Move the admission of Government's 32, your Honor.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 32 was duly admitted into evidence.)

/////

BY MR. HENDRICKS:

Q Now, could you locate Government's Exhibit 33?

A I have it.

Q Okay. Would you first address your attention to the deposit ticket which appears on the right-hand side of Government's Exhibit 33 and please identify it for us?

A It's a deposit slip dated 8/31 of '79 for the account of Harry E. Claiborne.

Q And what size deposit does it reflect?

A $75,000.

Q All right. Now, would you please tell us what the document is on the left-hand side of Government's Exhibit 33?

A It's a statement for the account of Harry E. Claiborne, period ending 8/31 of '78.

Q And what if any relationship exists between the deposit slip, $75,000 on the right and the checking account statement on the left?

A The statement does reflect that the deposit for $75,000 was credited to the account on 8/31.

Q Are both of these documents true and correct copies of documents maintained in the normal course by your bank?

A Yes.

MR. HENDRICKS: Move the admission of Government's 33, your Honor.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 33 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q I believe Government's Exhibit 34 is the next document.

A I have it.

Q Now, I believe you will see a check on the right-hand side of Government's Exhibit 34 in the amount of some $76,443.16 payable to the IRS?

A Correct.

Q Is that a -- who is the maker of that check?

A Harry Claiborne.

Q All right. And can you make out the date?

A August 31st, 1978.

Q Now, what is the document on the left-hand side of Government's Exhibit 34?

A A statement for Harry E. Claiborne, period ending 9/28.

Q And what if any relationship exists between the $76,000 check and the checking account statement?

A Statement reflects that that $76,443.16 check paid on 9/12/78.

Q And are both of these documents, the copy of the check and the checking account statement, true and correct copies of documents maintained in the normal course of your bank's operations?

A Yes.

MR. HENDRICKS: Thank you. I move the admission of Government's 34.

THE COURT: It will be admitted.

(Whereupon Government's Exhibit 34 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Would you look at Government's Exhibit 34 in conjunction with Government's Exhibit 33.

A (Complies.)

Q Let me ask you this question: Would there have been sufficient funds in the account to pay the $76,443 check to the IRS without the $75,000 deposit?

A No, there would not.

Q Now, sir, would you kindly address your attention to Government's Exhibit 35?

A I have it.

Q What is the first item on the right, top right?

A A check payable to Harry E. Claiborne in the amount of $88.30 drawn on the account of James J. Brown.

Q Okay. And is that check reflected in the item on the bottom, the bottom right?

A Yes.

Q And what is the item on the bottom right?

A Deposit slip showing a deposit totalling $1,778.30 in which the 888.30 is reflected.

Q Okay. What is the item on the left-hand side?

A Statement period ending 8/29 of '80.

Q Okay. What if any relationship, sir, exists between the deposit on the right and the checking account statement on the left?

A Shows a deposit of $1,778.30 was credited to the account on 8/13 of '80.

Q And are these three documents true and correct copies of documents maintained in the normal course of your bank's operation?

A Yes.

MR. HENDRICKS: I move the admission of Government's 35, your Honor.

MR. JOHNSTON: No objection.

THE COURT: It will be admitted.

(Whereupon Government's Exhibit 35 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Would you please look at Government's Exhibit 36.

A (Complies.)

Q Do you have that in front of you?

A Yes, sir.

Q Would you look, please, sir, at the item on the upper right-hand corner, the check and identify that for us?

A It's a check dated 11/7 of '80 made payable to Harry Claiborne in the amount of $7071.19 drawn on the account of James J. Brown.

Q Do you see a deposit slip below the check in Government's Exhibit 36?

A Yes.

Q What is the relationship between the check and the deposit slip?

A The deposit slip reflects a particular check mentioned was deposited on November 24th of '80.

Q To what account?

A Harry E. Claiborne.

Q All right. And what is the document on the left-hand side of Government's Exhibit 36?

A Bank statement period ending 11/28 of '80, Harry E. Claiborne.

Q And what if any relationship exists between the checking account statement on the left and the deposit on the right?

A The statement reflects that on 11/24 of '80, deposit for $7,451.19 was credited to Mr. Claiborne's account.

Q And are these documents reflected in Government's Exhibit 36 true and correct copies of documents maintained in the normal course of operation of your bank?

A Yes.

MR. JOHNSTON: No objection.

MR. HENDRICKS: Move the admission of 36.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 36 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Finally, sir, would you look at Government's Exhibit 37. Do you have that in front of you?

A Yes, I do.

Q Could you identify that for us?

A A check dated April 13th, '81, payable to the Internal Revenue Service in the amount of $20,817.59 drawn on the account of Harry E. Claiborne.

Q With your bank?

A Yes.

Q Is that a true and correct copy of an item maintained in the normal course of business by your bank?

A Yes.

MR. HENDRICKS: Move the admission of Government's 37.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

(Whereupon Government's Exhibit 37 was duly admitted into evidence.)

MR. HENDRICKS: No further questions. Thank you very much.

MR. JOHNSTON: I have no questions of this witness, your Honor.

THE COURT: Thank you very much, Mr. Settle. You may be excused.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

ELAINE HILDEBRANDT, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MS LITTLE:

Q Please give your full name and spell your last name, ma'am?

A Elaine Hildebrant, last name H-i-l-d-e-b-r-a-n-d-t.

Q Miss Hildebrandt, where do you live?

A Landover, Maryland.

Q Where are you employed?

A Treasury Department.

Q What is your position there?

A I am a branch manager, Adjudication Branch 2.

Q Miss Hildebrandt, maybe you could lean forward and speak into the microphone?

A Okay.

Q Miss Hildebrandt, in your position at the Department of Treasury, are you familiar with the procedures for the issuance, processing and eventual storage of United States Treasury checks?

A Yes, I am.

Q Are you familiar with the Treasury Department's recordkeeping procedures to keep track of those checks?

A Yes, I am.

Q I show you now what has been marked for identification as Government's Exhibit 38. I ask you what that is?

A This is a Treasury check.

Q And who is it made out to?

A Harry E. Claiborne.

Q Has that check been endorsed and paid?

A Yes, it has.

Q Was this check retrieved from the record center where United States Treasury checks are stored?

A Yes.

Q Are checks such as that prepared and maintained in the regular course of the business of United States Treasury?

A Yes.

Q And is it a regular practice of the Treasury Department to prepare and maintain such checks?

A Yes.

MS LITTLE: Move the admission of Government's Exhibit 38, your Honor.

MR. JOHNSTON: Could we at least have it identified. We don't know the date or the amount.

THE COURT: What is the amount?

THE WITNESS: The amount on the check is $44,256.

THE COURT: And what is the date?

THE WITNESS: The date is 7/24/81.

THE COURT: And is there anything on the check indicating what it was for?

THE WITNESS: Yes, on the front of the check it indicates that the check was issued for a tax refund.

THE COURT: All right.

BY MS LITTLE:

Q Does it say the year for the tax refund?

A Yes. Underneath the date of the check, it indicates that it was for the tax year of 1980.

THE COURT: All right. It will be admitted.

MR. JOHNSTON: No objection.

(Whereupon Government's Exhibit 38 was duly admitted into evidence.)

BY MS LITTLE:

Q Miss Hildebrandt, would you take a look at the back of that check and see if you see an endorsement stamp?

A Yes, I do.

Q First of all, is the check signed by anyone?

A Yes. It has an endorsement. Harry Claiborne.

Q And the stamp that you see, what does that stamp say?

A The stamp says, "GNLV Corporation, Golden Nugget Hotel and Casino."

Q Does that indicate that the check was cashed at the Golden Nugget Casino?

A Yes, it does.

MS LITTLE: Thank you. No further questions.

CROSS-EXAMINATION

BY MR. JOHNSTON:

Q Ms Hildebrandt, did you bring with you any other records that relate to the issuance of this check?

A No, I didn't.

Q All right. So all you are able to tell us is that this was a tax refund; is that right?

A Yes.

Q Was it an income tax refund?

A Yes, because of the information that is listed on the check.

Q You don't know how the amount of that check was computed, do you?

A No, I don't.

Q You don't know how that was calculated?

A No.

Q All you can tell us is that this is a tax refund check for something over $44,000, it was issued to Harry E.

Claiborne, was endorsed by him and apparently cashed at the Golden Nugget Hotel and Casino; is that correct?

A The endorsement on there, I can't say it was endorsed by him. It's endorsed in his name.

Q May I see it, please?

You are not familiar with Judge Claiborne's signature, are you?

A No.

Q That's why you can't say that he endorsed it; is that right?

A Right.

Q But you do find his name written as an endorsement on the back of the check?

A Yes.

MR. JOHNSTON: I have no questions, your Honor.

MS LITTLE: Nothing further, your Honor. She may be excused.

THE COURT: Thank you, Miss Hildebrandt, you may be excused. Leave the exhibit, if you will, please.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

ANNETTE HENSLEY, GOVERNMENT'S WITNESS, SWORN

THE COURT: Please state your full name and spell your last name, if you will.

THE WITNESS: Annette Marie Hensley, H-e-n-s-l-e-y.

DIRECT EXAMINATION

BY MR. HENDRICKS:

Q Miss Hensley, can you tell us what your address is, please?

A Yes, it's 6915 Shepard Street, Landover Hills, Maryland.

Q What is your occupation?

A I am secretary to the Judicial Ethics Committee.

Q Could you tell the ladies and gentlemen of the jury, not his Honor, because I am sure he is familiar with this, but could you tell the ladies and gentlemen of the jury what the Judicial Ethics Committee is?

A The Judicial Ethics Committee is a body of federal judges appointed by the Chief Justice of the United States to receive and review financial disclosure reports filed by the judges and some judicial employees of the United States.

Q Now, in your capacity as secretary to the committee, are you familiar with the process by which financial disclosure reports from United States District Court Judges are received and maintained?

A Yes.

Q All right. Can you tell us how frequently these reports are filed?

A They are filed annually on May 15th.

THE COURT: Unless the time is extended; is that correct?

THE WITNESS: Right.

BY MR. HENDRICKS:

Q Can you tell us to whom financial disclosure reports are sent when they are sent in by United States District Court Judges?

A Each judge is assigned -- each judge on the committee is assigned a geographical area of the judges in that area to review.

Q And so how are reports processed when they are received by you?

A The filers file two copies of the reports with the Committee. I keep the original in our file, and a copy is sent to the reviewing judge.

Q All right. Do you also keep any attached or accompanying correspondence?

A Yes. All that is sent in the file.

Q And can you tell us what the term "reviewing judge" means?

A Each judge is assigned a certain geographical area to review and he is referred to as the "reviewing judge."

Q All right. Now, in 1979, ma'am, do you know who the reviewing judge was for the Ninth Judicial Circuit?

A Yes. That was Bernard Decker.

Q Where is Judge Decker from?

A Chicago, Illinois.

Q And do you know whether the Ninth Judicial Circuit includes the state and district of Nevada?

A Yes, it does.

Q And did it in 1979?

A Yes.

Q Let me show you, if I might, a document which has been marked for identification as Government's Exhibit 39. Would you please take a look at that?

A (Complies.)

Q Can you identify for us, ma'am, what the document in the upper left is?

A This is a letter from Judge Tamm to Judge Claiborne informing him that we have not received a copy --

MR. GOODMAN: Objection. She is testifying as to the contents of a letter. The letter is not in evidence.

MR. HENDRICKS: Let me rephrase the question, your Honor.

THE COURT: All right.

BY MR. HENDRICKS:

Q Can you tell us the date of the letter in the upper left-hand corner?

A June 13, 1979.

Q Okay. And to whom is that letter written?

A Judge Harry Claiborne.

Q Who wrote the letter?

A Judge Edward Tamm.

Q Does it relate to the functions of the Judicial Ethics Committee?

A Yes.

Q All right. Could you tell us whether you see a letter in the lower left-hand corner?

A Yes.

Q And what is the date of that letter?

A June 20th, 1979.

Q To whom is that letter written?

A Judge Edward Tamm.

Q And who wrote that letter?

A Judge Harry Claiborne.

Q Does that letter relate to the functions of the Judicial Ethics Committee?

A Yes.

Q Can you tell us what year in particular is involved or referred to in these two letters?

A 1978.

Q Now, ma'am, would you address your attention to the document on the right-hand side of Government's proposed Exhibit No. 39. Tell us what that is?

A Judge Claiborne's financial report for 1978.

Q Now, are all of these documents then in Government's 39, documents which relate to the report filed and includes the report, the Judicial Ethics Report for the year 1978 filed by Judge Claiborne?

A Yes.

MR. HENDRICKS: At this time, your Honor, I would move the admission of Government's Exhibit 39.

THE COURT: Are they regularly maintained in the regular course of business by you in general supervision of the Judicial Ethics Committee?

THE WITNESS: Yes.

MR. RAGGIO: No objection to these items, your Honor.

THE COURT: Let them be admitted.

(Whereupon Government's Exhibit 39 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Let me show you Government's Exhibit 40. I believe that is just one item. Can you tell us what it is?

A Judge Claiborne's financial report for calendar year 1979.

Q And the date filed?

A May 17th, 1980.

Q Okay. Is this document similarly a financial disclosure form maintained in the normal course of your business?

A Yes.

Q And it is a true and correct copy of the original which you maintained?

A Yes.

MR. HENDRICKS: Move the admission of Government's 40, your Honor.

MR. RAGGIO: Objection, your Honor, relevancy and materiality has not been shown. This is for 1979.

THE COURT: Yes. I don't know the -- what is the relevancy? We are only dealing with the '78 report.

MR. HENDRICKS: Yes, sir. Your Honor, the 1979 return contains a statement as to client's fees while in private practice for the preceding year.

THE COURT: All right. I will admit it.

(Whereupon Government's Exhibit 40 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Now, ma'am, let me show you the document which has been marked for identification as Government's Exhibit 41.

First, if you would look at the item on the bottom left, can you tell us whether you see a letter dated August 12th, 1981?

A Yes.

Q To whom is this letter written?

A Judge Harry Claiborne.

Q From whom is the letter written?

A Judge Edward Tamm.

Q And does this letter relate to the functions of the Judicial Ethics Committee?

A Yes.

Q You also -- or are you also able to locate a letter dated March 2nd, 1981?

A Yes.

Q To whom is that letter written?

A Judge Harry Claiborne.

Q From whom is it written?

A Judge Edward Tamm.

Q Does it relate to the financial disclosure statement of Judge Claiborne for the year 1979?

A Yes.

Q And it relates then to the functions of the Judicial Ethics Committee?

A Right.

Q Can you also locate there a document dated February 18th, 1981?

A Yes.

Q To whom is that document written?

A Judge Edward Tamm.

Q From whom is that written?

A Judge Harry Claiborne.

Q And does it also relate to the functions of the Judicial Ethics Committee?

A Yes.

Q Now, would you please look at the right-hand side of Government's Exhibit 41 and tell us whether you see a letter written and dated March 31st, 1983?

A Yes.

Q To whom --

THE COURT: 80 what?

MR. HENDRICKS: '83, your Honor.

BY MR. HENDRICKS:

Q To whom is that letter written?

A Judge Edward Tamm?

Q From whom is it written?

A Judge Harry Claiborne.

Q Now, finally do you see on the top right-hand side a letter dated October 21, 1981?

A Yes.

Q To whom is that letter written?

A Judge Edward Tamm.

Q And from whom is it written?

A Judge Harry Claiborne.

Q Does this document relate to the functions of the Judicial Ethics Committee?

A Yes.

Q And in particular, does it purport to explain certain items for the year 1979?

A Yes.

MR. HENDRICKS: At this time, your Honor, we would move the admission of Government's Exhibit 41.

MR. GOODMAN: We would object, your Honor, based on Rule 403 as well as the facts that as far as Judge Tamm's letters are concerned, even though they may be business records kept by this witness, they show Judge Tamm's state of mind, which is not at issue in this case.

THE COURT: Well, I assume -- I don't know whether these same records -- let me see Exhibit 41, if you will, please.

THE COURT: I see I have extensive review here, ladies and gentlemen. I suspect that if you want to take a break, if you will do so, I think it would at least put you at ease.

(Whereupon the jury was excused for recess.)

THE COURT: Now, gentlemen, except for the references in the correspondence from both Judge Tamm and to Judge Tamm, relating first to the legal fees and secondly to the disposition of cases pending, which I think has been essentially covered, what is the relevance of -- I am inclined to feel that I would have to let in parts of these documents, but I am speaking about the entire file. In other words, this man is charged with giving a false report for the calendar year 1978, and I can see the relevancy as to the legal fees that he reported in here, and then I think filed an amendment for 1979. I can understand that. That was filed in 1983.

The false report, the only thing he is charged with is asserting that he did not report a loan which was admitted he didn't report that.

Now, what other relevancy do we have? The correspondence obviously shows that Judge Claiborne was not completely responsive to the required information. Later he gave a -- for instance, the real estate loans. He didn't disclose them at first. Now, he is disclosing them. What does that -- why does the jury have the right to consider that?

MR. HENDRICKS: Your Honor, we were not introducing the documents for purposes of allowing comment or argument on the real estate matters.

THE COURT: Well, can't I excise that?

MR. HENDRICKS: Yes, sir.

THE COURT: Or do something with it to get it out?

MR. HENDRICKS: If I might, your Honor. On the left-hand side, the August 12th letter, 1981, is admitted for purposes of demonstrating that the importance of this matter was not a proforma filing, it was taken seriously by the judges responsible for the administration of the Committee's business and was brought to Judge Claiborne's attention.

In response on the 21st of October, that's the right-hand side, Judge Claiborne writes back and makes certain comments, in particular on Page 3, he comments regarding legal fees received from clients during the year --

THE COURT: I don't --

MR. HENDRICKS: -- 1979.

THE COURT: On Page 3 Judge Claiborne has a heading, "Inadequate Reporting Covering Fees from Law Practice." I think that's properly admissible.

MR. HENDRICKS: And then the March 31st, 1983, matter, your Honor, contains an amended statement from Judge Claiborne regarding fees received from client's after entry of duty earned while in private practice. It comments on the same material for the calendar year 1979. That's the relevance of it.

THE COURT: I think that would be relevant.

MR. HENDRICKS: The other two documents were put in there simply to fill out the file and give it an appropriate context.

THE COURT: What is your view?

MR. GOODMAN: Our position is, your Honor, that apparently the legal fees that the prosecution is desirous of getting before the jury that are being criticized by Judge Tamm are the legal fees for 1978 which are not at issue in this litigation. The only legal fees that Judge Claiborne is charged with omitting are legal fees for 1979 and for 1980. This interjects an entirely separate situation. We submit that the probative effect of it is outweighed by the prejudicial value especially when you have the characterization by Judge Tamm of inadequate reporting covering fees from law practice. The characterization in and of itself outweighs any type of probative value concerning 1978.

THE COURT: Well, Judge Claiborne's explanation here may have some relevancy with respect to the 1980 return where our famous, not exactly certified public accountant, prepared the tax return.

MR. GOODMAN: Mr. Watson, that's correct, and we would have no objection on our examination of the witness we anticipate that we will offer the 1980 form which reflects a full disclosure by the Judge of $88,500.

THE COURT: I understand that.

MR. GOODMAN: What I am concerned about is the expression by Judge Tamm and the language used by Judge Tamm.

THE COURT: Well, we can excise some of this. Let's see. Judge Tamm, all he says is about the inadequate reporting covering fees from law practice is as follows: "In each of your three reports, you simply list receipt of attorneys fees without providing any further explanation as to the circumstances under which these fees are being collected by you, except for the fact that they were related to your former law practice (Items 18 and 19 on the chart)."

Now, the chart refers, on Items 18 and 19, against client fees and specifically for 1979, he apparently reported on the form, $23,050.76.

MR. GOODMAN: I submit that that's the part that may be relevant.

THE COURT: Yes, that's relevant.

MR. GOODMAN: That may be relevant.

THE COURT: Right next to it, of course, is the --

MR. GOODMAN: We have no objection to that aspect of it because that goes to the issues which are being tried. But we are objecting to the rest of the documentation which has all these questions about areas that really are not relevant as to the cost of purchase of certain property sale when it was acquired.

THE COURT: Well, I hope I make myself clear. I don't think that either the Government or I think the real estate references should go to the jury. Isn't that correct, Mr. Hendricks?

MR. HENDRICKS: Yes, sir.

MR. GOODMAN: Is what Mr. Hendricks is proposing to blank out the remainder of that portion of the page other than the aspect concerning the legal fees?

THE COURT: What page are you talking about?

MR. GOODMAN: This is the chart, the two-page chart which is attached to Judge Tamm's letter of August the 12th of 1981. It would be the second page and it would be the second -- well, it would be the last category.

THE COURT: You have no objection to 18 and 19, I take it?

MR. GOODMAN: My copy doesn't have 18 and 19.

THE COURT: 18 is client's fees for 1978, including sale of law office equipment in parentheses. It says for 1978, $35,000 income. For 1979, $23,050.76 and for 1980, $88,500.

MR. GOODMAN: I have no objection to 1979 and 1980 as being relevant. I don't think that we are concerned at all about 1978.

THE COURT: Well, I think it should be limited to the issue in this case, the issues in this case, namely, the alleged failure on the part of Judge Claiborne to report clients' fees that he collected after he became a judge for the year 1979 and for the year 1970.

MR. GOODMAN: To that we have no objection. We believe that that is relevant. I don't know the relevancy of all of the rest of this because I can't see how it relates to this case.

There is nothing specifically under the loan items, because I remember from the last trial indicated that he said there was no loan that he had obtained that was outstanding.

What is the relevancy, Mr. Hendricks, of the balance of this?

MR. HENDRICKS: Your Honor, we sought to introduce it simply for the purposes of providing the entire record for purposes of demonstrating context. We have no intention of arguing the relevance of these other --

THE COURT: I am not worried about your argument. I am worried about the inference that the jury might draw.

Here is a man who obviously failed to comply with their regulations, and Judge Tamm's letter I don't read as being highly critical or anything like that. He just points out to him that he failed to follow the instructions, and I don't see anything really objectionable in the letter, except I agree with Mr. Goodman that references to real estate assets and so on which he subsequently came forward with, inadequate reporting of new assets, that is not pertinent. Then you come down to inadequate reporting covering fees from law practice; that is pertinent. And there is nothing in Judge Tamm's comments there that in any way are highly critical that I see that causes attention to the fact that he failed to comply with all those regulations.

MR. GOODMAN: He is not charged with that, your Honor, and I believe that is where the problem is under 403.

THE COURT: I understand and I am desirous of trying to excise the portion of this and still make it sensible to the jury, insofar as it refers to the chart relating to the fees received which is pertinent. Everybody concedes that. That is for 1979 and 1980 at least.

MR. GOODMAN: We have no objection as I stated of having the report go in with that limitation as to the particulars which are relevant to this case.

THE COURT: And then Judge Claiborne's explanation in his letter of October 21, 1980, should be as I see it, inclined to, the charge of inadequate reporting covering fees from law practice, and there he mentions a 1978 report, but there is no charge now for fees for 1978, but it is sufficiently tied in with the total disposition of his assets as claimed on his utterly false, whether by Watson or by Judge Claiborne, I am not saying, but --

MR. GOODMAN: The problem as I perceive it, your Honor, is that we are dealing with three separate and distinct counts on this indictment and one of these counts, of course, has to do with the Ethics form which the judge was required to fill out and the only allegation concerning that has nothing to do at all with income received in '79 and '80 from legal fees. It's simply that he omitted to state a purported loan.

THE COURT: I beg your pardon. The chart that refers here to his fees, reported fees of $23,050.76, I assume we will have ultimately his actual report that he did file, won't we?

MR. GOODMAN: But he is not charged with that. That's the point that we are trying to make. He is not charged with any type of false report to the Ethics Committee.

THE COURT: That makes no difference. This is corroborative evidence. This is corroborative evidence to support the theory that in 1979 that he believed at the time he filed a report at least, whenever that was, and I haven't seen the original report, that his legal fees that he received were $23,050.76. And as I understand it, now he claims that he actually received $45,000 and that Wright didn't report it.

MR. GOODMAN: He received that money and he told Wright about it and --

THE COURT: I understand your contention, Mr. Goodman, but this is corroborative of the fact as of the date he filed his report, but I don't know when he filed his report.

MR. GOODMAN: I would submit then a limiting instruction should be given concerning this, that the jury not be --

THE COURT: I agree with you. What I wanted you to do, and you and Mr. Hendricks see if you could agree on what should be excised.

My present inclination is that everything should be excised except the portions that deal with the inadequate reporting covering fees from law practice. I am afraid we will have to permit the part for 1978 because Wright himself testified that he took, he reported all of disposition of law practice and then, of course, Mr. Watson came along and claimed $250,000 deduction for the so-called 1978 sale of his law business.

MR. GOODMAN: Is the Court's directive limited solely to Judge Claiborne's response to Judge Tamm? Because we believe that any position of Judge Tamm goes to Judge

Tamm's state of mind as irrelevant. What's important here is Judge Claiborne's state of mind. So the excision should only apply to the letter of October 21st from Judge Claiborne to Judge Tamm.

THE COURT: This is maintained in the regular course of business of the Judicial Ethics Committee of which Judge Tamm is the chairman. The only thing I am trying to help you out, I think I could let the whole thing in. That's what Mr. Hendricks wants, but I am trying to protect you under Rule 403 and give you some benefit of the doubt and confine it only to the inadequate reporting covering fees from law practice. That's what I am trying to do.

MR. GOODMAN: I understand that. I am not going to try to worsen the situation, but it's our position that Judge Tamm's state of mind is not in issue.

MR. HENDRICKS: Your Honor, might I suggest that after court today, counsel confer in an attempt to reach an agreement on this matter that be authenticated by this witness. I understand Judge Decker is in the courtroom and if possible, your Honor, if consistent with your Honor's desires, we would like to --

THE COURT: I just received a note here that Judge Decker is the next witness. He wants to testify today or he does not want to come back. He is in Judge Reed's chambers.

MR. GOODMAN: We would like the latter suggestion.

THE COURT: You mean you don't want him to come back?

MR. GOODMAN: Right.

THE COURT: Well, can we -- do we need this particular exhibit for the purpose of having Judge Decker testify?

MR. SHAW: Perhaps I can respond to that. We do not need that exhibit to be in evidence. He would read from portions of the sections that you have said would be admissible.

Certainly he is going to say that the liabilities, the legal fees for 1979, he is going to talk about; he is certainly not going to talk about the real estate transaction.

MR. GOODMAN: Well, there are other documents though, your Honor, that have not yet been testified to that we would want to examine Judge Decker about.

For example, a document that the witness has in front of her, I believe, dated May the 15th of 1981.

THE COURT: I excluded the last trial one letter Judge Decker had written to Judge Tamm, and I still am excluding that.

MR. SHAW: That wasn't offered, your Honor.

THE COURT: It's not offered in this trial?

MR. SHAW: That's correct.

THE COURT: Well, if Judge Decker is only going to refer to the inadequate reporting of legal fees, and maybe his review of the chart, report which showed fees from clients, I see no reason why that can't be done, but at the present time I don't think that it would be appropriate for me to let the entire Government's Exhibit 41 to come in evidence. I agree, as I indicated earlier, that parts of it would be admissible; parts of it should be excised. And there is no harm in that. I will just tell the jury as to the excised portions that other items were perhaps considered by the Committee, but they are not before this jury.

If that be the case, bearing in mind we are reaching the hour of adjournment, who am I to honor to keep over for tomorrow? Miss Hensley or Judge Decker?

MR. HENDRICKS: We have been told, your Honor, that Ms Hensley will be available tomorrow. We understand --

THE COURT: Why can't we let in Government's Exhibit 41 to the extent that it refers either from Judge Tamm or to Judge Tamm from Judge Claiborne's references to legal fees that were reported?

MR. GOODMAN: As long as my objection remains noted by the Court, I understand the Court's ruling. If that's the Court's ruling, we abide by it. But before we would excuse --

THE COURT: I am willing to reverse myself and let it all in, but it's really possibly admissible under the so-called books and records provisions. But I am trying my best to exercise some discretion under Rule 403. If you don't like that, Mr. Goodman, I will let it all in.

MR. GOODMAN: No, I can't say that because I am the one who objected on the basis of 403 and the Court's made its ruling.

As to the next matter, if this witness is going to be excused and Judge Decker is going to be taken out of turn, I would respectfully request the Court to permit us to lay a foundation with this witness as to the May 15th, 1981, document which is in her possession which reflects and which we would like to ask Judge Decker about past fees from legal practice in the amount of $88,500, because I think it would be very unfair to let Judge Decker take the stand and we ask -- can't ask him questions about this document.

THE COURT: Which document now are you talking about?

MR. GOODMAN: The witness has a document in front of her which has not been marked to my knowledge which we would, on cross-examination of the witness, hope to introduce into evidence which reflects the very issue which the Court has ruled on.

THE COURT: Well, this was received May 16th, 1981. I didn't say that this was not admissible, did I?

MR. GOODMAN: No, you did not. We haven't gotten to her yet. I think we are going to take, if we are going to take Judge Decker out of turn, we should have access to that document and be able to question him about it.

THE COURT: Mr. Hendricks, do you wish to ask this witness anything with respect to the document which she has just handed me which apparently is a report filed May 16th, 1981, which does recite past fees from law practice, fees, $88,500.

MR. HENDRICKS: Your Honor, we have no questions to ask of her. Our position is, your Honor, if the defense is seeking to introduce this document, that it is a document which is self-serving in nature, which is not being, the opponent of the document is the defendant himself and it is not a party opponent and consequently is inadmissible.

THE COURT: I don't know anything about it. This apparently bears Judge Claiborne's signature. I ought to be familiar with it now. I guess I am a handwriting expert of his signature, I have seen it so much now. But he reports on here the very crucial question. Now, quite true he may have learned that some investigation had taken place by that time.

MR. GOODMAN: No, your Honor.

THE COURT: But be that as it may, why isn't the fact that he reported this from his practice consistent with the fact that he reported it to Mr. Watson for his income tax purposes?

MR. HENDRICKS: We don't -- you say "why isn't it"?

THE COURT: Yes. Why isn't it consistent with the fact that he contends now that he reported all of this to Mr. Watson?

MR. HENDRICKS: I am sure it may be argued to be --

THE COURT: Well, then isn't it appropriate evidence to argue from?

MR. SHAW: Your Honor, with the Court's permission if I may. It's relevant because it's probative to have the defense theory. But that doesn't explain the problem that it's hearsay. Now, in the first level of hearsay, it's all right because it's a business record and it can be authenticated through this witness for that purpose, but for the second level of hearsay is that an out of court statement by the defendant according to our minimum that we filed earlier, the defendant cannot introduce his own prior statements because he is not a party opponent of himself. The Government could introduce that but in other words, she could authenticate it and the defendant himself could introduce it through himself if he chooses to do so. There are two levels of hearsay and this witness can get through one level, but not the other.

MR. GOODMAN: What we are trying to get is get this document in evidence so we are able to question Judge Decker about it. Now, we could get it into evidence a lot of different ways, through this witness as a business record or we could get it into evidence when Judge Claiborne takes the witness stand and testifies that he submitted the document, but that would mean that we will have to have Judge Decker back and he doesn't like it here.

THE COURT: I know that.

You may question it for identification purposes with this witness in the presence of the jury and then question Judge Decker about it. I don't know what he can say about it. He doesn't know anything about this past fees from law practice, $88,500. He has reported it on his chart at $88,500.

MR. GOODMAN: I understand. That's what he was supposed to do.

THE COURT: What is the great moment of this?

MR. GOODMAN: Because there's another document --

THE COURT: You can ask Judge Decker very easily, "Where did you get the $88,500 for clients' fees for the year 1980?" He will say, "I got it from Judge Claiborne's financial report for that year."

MR. GOODMAN: There is also another document that I believe the witness has with her, and that is an amendment to these financial disclosure reports which Judge Claiborne filed in 1983.

MR. SHAW: That's part of the exhibit that's offered.

THE COURT: Well, now you want to get into that. I know Judge Claiborne knew this investigation was going on in 1983. We all know that.

MR. GOODMAN: I don't know whether any of us knew anything about the Ethics Committee. I think that may have been an afterthought on the part of Mr. Shaw.

MR. SHAW: The Grand Jury insisted.

THE COURT: That might hurt you are more than it might help you, I might add.

MR. GOODMAN: I would like to see, with the Court's permission, if I could see.

THE COURT: This?

MR. GOODMAN: No, the amendments which I believe she has with her that were submitted in 1983.

THE COURT: Well, here's the only thing.

MR. HENDRICKS: It's part of Government's Exhibit 41, your Honor.

THE COURT: Here's one, March 31st, 1983, "Fees received from clients after entry of duty, but earned while in private practice, $41,073.93. Then on April 4, 1979, I sold an airplane for $11,000."

We all know that Judge Claiborne knew about this March 31st, 1983. If he is honest, he will admit that he knew the investigation was going on. I don't think we better go into that.

MR. GOODMAN: All I can state to the Court is --

THE COURT: That certainly doesn't amend his tax return in any event, and the Supreme Court has said even if you file an amended tax return, that doesn't stop a criminal prosecution.

MR. GOODMAN: We understand that. If the Court will note the second to last page, which is also dated March 31st, 1983, Judge Claiborne indicates that the fees received were $24,895.

I mean if the Court's reasoning is to be applied across the board --

THE COURT: Yes, I know. How can I put this in in light of the Supreme Court's saying that even if you file an amended tax return that doesn't bar the criminal prosecution.

MR. HENDRICKS: Your Honor, we are offering this document for the following --

THE COURT: Furthermore, gentlemen, the $24,895.12 refers to his income from clients for the year 1978 and Judge Claiborne is no longer charged with any failure to report for the year 1978.

So how would that be appropriate?

MR. HENDRICKS: We would be happy to redact that portion out.

THE COURT: Yes.

MR. HENDRICKS: The portion that we do believe is relevant is the --

THE COURT: That's not relevant at all because his disclosure form was filed June 20th, 1979, for 1978 and he is not even charged with anything in violation of 1978.

All right. Let's call the jury. You may make inquiry, Mr. Hendricks, and then this lady may identify this particular document.

MR. GOODMAN: As of this time until Mr. Hendricks and myself get together regarding the excision, it won't go into evidence?

THE COURT: If he wants her to read the parts that I mentioned that I would rule admissible, that's all right.

(Whereupon the following proceedings were held in open court in the presence of the jury.)

THE COURT: Have seats, ladies and gentlemen.

I have your note, and as far as I am concerned, after we recess, if you wish to go to the place that you have designated to get some sun and fresh air, that's perfectly all right with me. The marshal will have to accompany you and it is entirely agreeable. I might add, however, that we have got a witness here from Chicago who must, he is a judge and he wishes to get back and I am going to do the best I can to hear him.

Go ahead with this lady very briefly now and I will hold her here for tomorrow morning for further purposes.

BY MR. HENDRICKS:

Q Miss Hensley, referring to Government's Exhibit 41 there, all of those records that you have identified maintained in the course of the operation of the Judicial Ethics Committee under your supervision and control?

A Yes.

MR. HENDRICKS: That's all I have.

MR. GOODMAN: I would prefer to reserve my cross-examination so we could do it more extensively. I would like to ask the witness about a particular document in her possession.

THE COURT: Yes.

MR. GOODMAN: If that's all right.

THE COURT: That's what I thought you wanted to do. That will be all right.

CROSS-EXAMINATION

BY MR. GOODMAN:

Q Miss Hensley, do you have a document in your possession which is dated May the 15th of 1981, bearing a signature which purports to be that of Harry E. Claiborne?

A Dated May 16th.

Q May 16th. Is it a two-page document?

A Yes.

Q What is it called?

A Judge Claiborne's Financial Disclosure Report.

Q For what year?

A Calendar year 1980.

Q And is this report kept in the ordinary course of business?

A Yes.

Q Is it kept under your custody and control?

A Yes.

MR. GOODMAN: Your Honor, at this time I would like it marked and --

THE COURT: Let it be marked as Defendant's Exhibit --

MR. GOODMAN: Two, I believe.

THE COURT: It may be marked for identification purposes.

MR. GOODMAN: And ask that it be admitted into evidence.

MR. HENDRICKS: We object on the grounds stated during the jury's recess.

THE COURT: It hasn't been admitted. It's marked.

MR. GOODMAN: I did offer it.

THE COURT: I will reserve ruling on that, but I will permit you to question Judge Decker on it.

MR. GOODMAN: Thank you, sir. And that will be Defendant's 2.

(Whereupon a document dated May 16th, 1981, from Harry E. Claiborne was marked as Defendant's Exhibit 2 for identification.)

MR. GOODMAN: I have no further questions of the witness at this time.

THE COURT: I will excuse you for the day. You better leave that, you have got that one document?

THE WITNESS: Yes.

THE COURT: We will look for you tommorrow morning at 9:30.

THE WITNESS: Okay.

THE COURT: Judge Decker available, gentlemen?

MR. SHAW: Yes. Your law clerk is getting him, your Honor.

(Whereupon the witness was excused.)

THE COURT: One thing I like about Judge Decker is he has less hair on his head than I have.

(Whereupon the witness was duly sworn.)

THE COURT: I told the jury that one thing I liked about you was that you had less hair on your head than I do.

THE WITNESS: Shall we take a vote.

THE COURT: All right, Mr. Shaw.

MR. SHAW: Thank you, your Honor. Both of your Honors.

BERNARD N. DECKER, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SHAW:

Q Could you give me your name, please, and your occupation?

A My name is Bernard N. Decker. My occupation is I am a District Court Judge.

Q For the United Stated District Court?

A Yes. United States District Court, City of Chicago.

Q And that is what is called by lawyers, I guess, the Northern District of Illinois?

A Northern District of Illinois, if you get the full treatment.

Q When were you first appointed to be a United States District Court Judge?

A I received an appointment from President Kennedy in December, 1962, and it was confirmed in April '63, so I have been serving since '63.

Q Serving continuously as a federal judge since 1963?

A That's correct.

Q Could you tell us what the Judicial Conference of the United States is? What that body is?

A Well, the Judicial Conference of the United States is created by statute. It's a body made up of the chief judges of each one of the circuits, plus a District Court Judge from each one of the circuits and presided over by the Chief Justice of the United States Supreme Court.

Q Generally how long has that body been in existence?

A I don't know. It's been in existence ever since I have been in the court, a long time.

Q Did the Judicial Conference out of the United States have a committee at one time called the Review Committee?

A Yes. We had a Review Committee.

Q Were you on that committee at any time?

A I was on that committee for a period from about 1965 to 1968.

Q Did there come a time that the Review Committee ceased existing?

A Yes. It was supplanted by another committee.

Q Could you tell us generally what the functions of the Review Committee were during the time that it was in existence?

A Well, the Review Committee was primarily interested in what judges were doing besides judging. I mean they were interested as to whether or not they had outside activities that might interfere with their judicial duties and functions and at the same time, they were interested in finding out something about the possible gifts or excessive hospitality, reimbursement for expenses and that type of thing and it was a general oversight to determine whether or not conflicts of interest might exist in connection with certain occupations that -- or other occupations that judges may have been engaged in, such as acting as trustees and executors and that type of thing.

Q Now, you stated that that Committee was replaced by another committee in 1978?

A That's correct.

Q What was the name of that new committee?

A The Ethics in Government Committee.

Q It was created by the Ethics in Government Act of 1978?

A Yes. The Financial Disclosure Committee.

Q And could you tell us what the congressional purpose of the Ethics in Government act of 1978 was?

A Well, from the history behind the act, I would assume that the principle purpose of it was to provide for the public generally a full disclosure of the financial activities of the officials in government, senators and representatives. Insofar as the Disclosure Act as it applied to judges, there was a separate portion of the act that applied to us.

Q Did it outline the types of financial transactions that judges needed to disclose?

A Yes. It went far beyond the review committee that I served on before, and in this connection, judges are required in the same way that Congressmen and Senators are required, to a full disclosure as to assets, liabilities, income liabilities, gifts and a whole array of financial material.

Q Where were the judges required to file those financial statements?

A The financial statements that are sent to the judges for their signature are sent to Judge Tamm who is the chairman of this committee and they are sent to him in Washington, D. C. to begin with.

Q Are they also sent to the local courts where the judges sit?

A Yes, they are also sent to the local courts where the judges sit so that any person can walk in to the Clerk's Office any time and if he is interested in what the financial holdings of a particular judge may be or history of what may have gone on in that judge's business life in connection with that report, he is able to take a look at it and find out any information that he may have interest in.

Q Now, was one of the requirements of the Ethics in Government Act that the Judicial Conference of the United States appoint a Judicial Ethics Committee?

A Yes, that was provided specifically in the statute.

Q And they did appoint that Judicial Ethics Committee, I take it; is that correct?

A That's right.

Q Were you a member of that committee?

A Yes, I have been a member since 1978.

Q And you are still a member today, I take it?

A I am.

Q How were the members of the Judicial Ethics Committee selected, if you know?

A The Chief Justice of the United States appoints them.

Q What were your duties generally since 1978 with regard to the Judicial Ethics Committee?

A Well, there were nine of us during the period of '78, '79 and '80 who served on the Committee along with Judge Tamm. And our duties were to receive and examine the judges reports, a copy is -- what happened is the reports are sent to Judge Tamm in Washington. In addition to being filed in the District Court, and a copy is sent to Judge Tamm and that copy is sent to the examining judge, and what we have been doing is to take that report and we get--during this time, I was examining reports in the Ninth Circuit.

Q So Judge Tamm is chairman of the Committee. We would know that when he received a report from a certain judge, he would see which judicial circuit that judge was under and send it to the appropriate judge; is that correct?

A That's correct, yes.

Q And your responsibilities during that period were to review the filings of all the Federal Judges in the Ninth Circuit; is that right?

A Yes, sir.

THE COURT: I hope that you no longer have that entire responsibility?

THE WITNESS: I don't and I am glad I don't. They divided that between two of us.

/////

BY MR. SHAW:

Q When did that division occur?

A That occurred about two years ago.

Q Okay. Prior to two years ago, you reviewed for all of the judges in the whole circuit?

A That's right.

Q And that included the federal judges in the State of Nevada?

A It did.

Q What were the reviewing judges required to do with those reports when they were afforded them from the chairman of the Committee?

A Well, our responsibilities are to take a look at the report and then check the report against the requirements of the statute and also against the instructions that the judge also receives when he is making out his report to determine, first of all, whether or not all of the material that is required to be filled out has been properly filled out. And as to whether or not the requirements of the statute have been met at least in that respect. That's the initial function that we perform.

Q What other functions are performed if any?

A Well, the other function is, and this is by reason of the statute itself, we are required to determine whether or not there is anything on the face of the form or any information that would indicate to us that there might be a possible conflict of interest by any of the material that appears there or a possible ethical violation of one type or another.

Q Could you tell us what a conflict of interest would be? What does that mean?

A Well, a conflict of interest would exist in the event that a judge who was going to hear a case was also having --

MR. GOODMAN: Your Honor, excuse me, Judge. I would object on the ground of relevance and materiality, your Honor.

THE COURT: Overruled.

THE WITNESS: A conflict of interest would exist in the event that for example, that the report demonstrated that a judge was involved in connection with a particular transaction by an attorney who was practicing law in his court. I mean, if that information appeared on the report, why you would certainly consider that a conflict of interest

BY MR. SHAW:

Q For example, if I had loaned money to Judge Hoffman during the course of this trial, that would be a conflict of interest of Judge Hoffman's perhaps?

A It certainly would and might not be a very good investment.

THE COURT: Aren't you right!

BY MR. SHAW:

Q During the course of your review for the filings for those two purposes, if you saw what appeared to be an incomplete filing or what appeared to be a perhaps potential conflict of interest, what would you do about it?

A Well, what we did, what the reviewing judge did was to prepare a file of his own on that particular report and then send a letter to Judge Tamm in Washington setting up at least the deficiencies that we saw or the fact that certain blanks had not been filled in.

Q What if anything would he do then?

A Judge Tamm, if he agreed with our suggestions, would send a letter to the particular judge suggesting to him that the examining judge had found certain deficiencies and ask him to correct it, and either amend his report or to send a letter explaining the particular problem.

Q Now, in the course of your duties as a member of the Judicial Ethics Committee, did you have occasion to review Judge Claiborne's report for the year 1978?

A I did.

Q If I may show you what has been marked as Government's Exhibit No. 39, specifically the two-page document which appears on the right side of Government's Exhibit No. 39, could you tell us what that is, the report that you filed for the calendar year 1978?

A Yes, that appears to be the report.

Q Now, can you tell from the stamp that is on the front page of that document the date that that report was received by Judge Tamm?

A June 25th, '79.

Q But that's reporting on Judge Claiborne's financial condition for the calendar year 1978; is that right?

A That's correct.

Q Now, the entire document is two-pages; is that right?

A That's right.

Q Now, would you have received that report from Judge Tamm in the normal course as you have just described it to us?

A I would have received a copy of that report.

Q And Judge Tamm would maintain the original in the files of the Judicial Ethics Committee?

A That's correct.

Q Now, it appears that there are some instructions in the margin on that two-page report; is that correct?

A There are.

Q Do you know where those, the wording of those instructions came from?

A Well, the wording of those instructions generally are in the amount of excerpts of the statute itself so the judge will know what he is required to do.

Q Do those instructions require the judge to provide any information other than what Congress has required that the judge provide?

A Not that I am aware of.

Q Do the judges receive any other instructions in addition to the ones that are in the margins of the form itself?

A Yes. In addition to sending the form with the judge, the judge also received a pamphlet which included the instructions from the Committee to assist him in making up his report.

Q Is that pamphlet of instructions sent to the filing judge along with the blank form that he needs to fill out?

A That's correct.

Q Now, are you able to tell from Exhibit No. 39 specifically the instructions with regard to liabilities, what types of liabilities filing judges were required to report for the calendar year 1979 or '78, excuse me?

A Well, this is one that I am unable to read, but I can tell you what it provides.

Q Please do.

A I have seen enough of them.

It provides that the judges include in his report any liabilities that existed at any time during the preceding year which amounted to in excess of $10,000.

Q So he would have to report it if at any moment during that preceding year he owed that amount of money?

A That's correct. There are some exceptions, but --

THE COURT: If he served as a judge for any part of that.

THE WITNESS: That's correct.

BY MR. SHAW:

Q I would show you what is a blowup that has been marked of Government's Exhibit No. 39-A and ask you if you are able to say whether that's a fair and accurate portrayal of Page 2 of Exhibit 39 that you have just identified?

A It looks like it is even with the bad printing.

MR. SHAW: Your Honor, we would move Exhibit 39-A.

THE COURT: All right. Let it be admitted.

(Whereupon Government's Exhibit 39-A was duly admitted into evidence.)

THE COURT: Now, could you tell us, Judge Decker, I want to hold it --

MR. GOODMAN: May I see it too.

BY MR. SHAW:

Q Does the signature at the bottom of this exhibit, does that appear to be Judge Harry Claiborne's signature, the person filing the report?

A I have not seen his signature, but the name Harry E.

Claiborne appears there.

Q Are you able to tell from your copy what the date is next to Judge Claiborne's signature?

A June 20th, 1979.

Q Now, directing your attention to paragraph 4, which is the I believe the second paragraph on this page entitled "Liabilities", is that the location where the filing judge is required to report the liabilities that you have just described for us?

A That is true.

Q Now, can you tell us what the response was that Judge Claiborne gave to the liabilities that he had during the calendar year, the portion of the year 1978 that he was a judge.

A Well, there were some instructions with reference to the blanks and at the very top of the first page, it says "If none, check," and that applied to all of the blanks on both pages, including the blank under No. 4, liabilities. And that is checked.

Q So the box "none" is checked next to liabilities on Judge Claiborne's report; is that correct?

A That's correct.

THE COURT: That means he owed nothing over $10,000; is that correct?

THE WITNESS: That's right.

BY MR. SHAW:

Q Now, if Judge Claiborne had borrowed $75,000 in 1978 to pay his taxes and if he owed that while he was a judge, would the law have required to him to report that loan and its source on Exhibit No. 39, which is the form that you have just identified?

A Yes, it would.

Q And does such a loan appear on that exhibit?

A It does not.

Q Is the truthful disclosure of such liabilities material to the functions of the Judicial Conference of the United States and to the Judicial Ethics Committee?

MR. GOODMAN: Objected to as calling for a conclusion. It's a matter of law.

THE COURT: I will overrule the objection.

THE WITNESS: Well, our Committee is unable to function unless --

MR. GOODMAN: Your Honor, excuse me. Objected to as being nonresponsive.

MR. SHAW: Could you answer that yes or no first and then I will ask you the next one?

THE WITNESS: Well, the answer is yes.

BY MR. SHAW:

Q And how is it material to the functions of the Committee of the Judicial Conference of the United States?

A It's material, number one, because the statute considers that information important information in connection with the persons who are to make out these reports and the question as to a general, as to an official liability during the preceding year apparently has significance enough as far as Congress was concerned to provide that particular thing should be disclosed in the report, and the Committee, our Committee, if it isn't disclosed and the liability exists, we are in no way to determine whether or not, if there was such a loan, whether it was a proper loan, whether a possible conflict of interest may have existed and until we would know the identity of the person who made the loan, it would be impossible to determine whether the conflict of interest could or could not exist.

Q Judge Decker, did you also review Judge Claiborne's filing, Judicial Ethics filing for the year 1979?

A I did.

Q Now, I would show you a document which has been marked as Government's Exhibit No. 40, which appears to be a two-page document and ask you if you can identify that for us, please?

A Well, that's the report that was due the coming year, '79, which was due on May 15th, '80.

Q Does there appear a signature at the bottom of the second page?

A Yes.

Q And next to that is the date, May 14, 1980?

A That's correct.

Q But again, that is for Judge Claiborne is reporting his financial condition during the calendar year 1979; is that correct?

A That's right.

Q Now, again, instructions seem to appear on this document as well even though it's in somewhat of a different format than the previous year; is that right?

A The instructions are there under the item of liabilities.

Q And there are instructions for virtually every item in Exhibit No. 40; is that right?

A That's true.

Q And again, are these instructions that are just paraphrased from the statute passed by Congress?

A That is true also.

Q And are judges required by these instructions and by this form to provide any information that is not required by Congress in the Ethics in Government Act?

MR. GOODMAN: I am going to object, your Honor, as to this particular document. This is not at issue in the case. It's being offered.

THE COURT: It was admitted by agreement.

MR. GOODMAN: But this line -- it was admitted for a limited purpose by agreement.

THE COURT: I don't remember any qualifications.

MR. GOODMAN: As to the declaration.

THE COURT: It was deemed to be relevant and get to the relevancy of it, if you will.

MR. SHAW: Yes, your Honor.

BY MR. SHAW:

Q First of all, does the 1979 filing made by Judge Claiborne reveal any liabilities?

A It does not.

MR. GOODMAN: Objected to as irrelevant.

THE COURT: That wouldn't make any difference as far as that's concerned. He's charged -- the defendant is charged with a failure to report for the 1978 return. Get to the relevancy.

MR. SHAW: Yes, your Honor.

BY MR. SHAW:

Q Judge Decker, directing your attention to the first item on Page 1 of Exhibit 40, does that item require the filing judges to list their noninvestment income for the entire calendar year of 1979?

A Yes, it does.

Q Now, what if any information did Judge Claiborne provide in his 1979 report with respect to the legal fee income that he received in private practice before he became a judge?

A The only thing that he showed was clients' fees while in private practice and the amount set forth was $23,050.76.

Q And there is also an item called sale of airplane, $11,000?

A Yes, there is that also.

Q Does Judge Claiborne provide the identities of the clients or the sources of that income?

A Just the generic description, clients' fee with no particular specification of who the clients were or any other information except for that.

Q Does the Ethics in Government Act require the filing judges to provide the sources of these fees?

MR. GOODMAN: Objected to as being irrelevant.

THE WITNESS: It does. Excuse me.

THE COURT: Well, he's charged with certain fees. I will admit it.

BY MR. SHAW:

Q Judge Decker, the law does require the sources to be provided by the filing judge; is that correct?

A The law requires that the source and the type and the amount of earned income from any one source should be provided.

Q Okay. After reviewing the --

THE COURT: I will tell the jury, however, that Judge Claiborne, ladies and gentlemen, is not charged with making any false reports to the Judicial Ethics Committee for the year 1979. He is charged for the year 1978 and specifically with respect to the alleged failure to report an alleged loan of $75,000, and I wish you would expedite it and get to the only relevant part, which I think has already been pointed out.

MR. SHAW: I believe that the $23,000 filing was that part, your Honor.

THE COURT: Yes, that's all right.

BY MR. SHAW:

Q After reviewing the 1979 financial report of Judge Claiborne, what if anything did you do?

MR. GOODMAN: Objected to as being irrelevant.

THE COURT: Sustained.

BY MR. SHAW:

Q If I may show you what has been marked as Government's Exhibit No. 41, which appears to be a number of letters.

First of all, if I may direct your attention to a letter on the left side towards the bottom of Exhibit 41, indicated August 12, 1981, are you able to identify that?

A Yes. I have it before me.

Q That a letter to Judge Claiborne from Judge Tamm?

A It is.

Q Now, specifically directing your attention to rather capital letter C on Page 2 of that letter, is that entitled "Inadequate reporting covering fees from law practice"?

A Yes, that's what the caption is.

Q Are you able to summarize what the portions of the letter dealing with the inadequate reporting deal with?

A Well, the summary would be that Judge Claiborne is being told in this portion of the letter that in each of his three reports that he simply lists the attorney's fees without providing any further explanation as to the circumstances under which these fees were being collected by him, except for the fact that they were related to his former law practice. Then he is being told also that at the time that he reported this item in his 1978 report which was the one we just mentioned, that our instructions provided that items to report included to provide information regarding any agreements or arrangements continuing -- concerning continuation of payments by a former employer, including a former affiliate with a law firm.

Q Now, I direct your attention, if I could, to the letter on the right side of Exhibit 41 dated October 21, 1981. Do you see that letter?

A Yes.

Q That a letter from Judge Claiborne to Judge Tamm, the chairman of the Committee?

A Yes, it is.

Q Does Judge Claiborne in that letter address the concerns of Judge Tamm that you have just related to it?

A To some extent, yes.

Q And to what extent does he address those concerns?

A Well, he says, in this he -- on Page 3 in dealing precisely with the question that we raised with him --

MR. GOODMAN: Your Honor, I am going to object on the relevancy grounds once again.

THE COURT: If it deals with clients' legal fees, I have ruled that it's admissible. I don't want the whole letter to be read.

THE WITNESS: I will just summarize it.

At this point in time, what he says is that just before he was sworn in he entered into an oral agreement with James J. Brown who was an employee to take over a number of cases and finish them on the basis of one-third and two-thirds, one-third to the Judge and two-thirds to Mr. Brown.

BY MR. SHAW:

Q Is that the first time that the Committee or anyone else had been advised of the agreement with Mr. Brown?

A Yes.

MR. GOODMAN: Objected to as being irrelevant.

THE COURT: Let's get to the relevancy. You covered it, I think, haven't you?

MR. SHAW: Just about, your Honor, yes.

BY MR. SHAW:

Q Did there come a time -- well, let me direct your attention to the last page of the last document on the right side of Exhibit 41, which purports to be an amendment to the 1979 financial disclosure report. Do you see that?

A Yes, I do.

Q Was that received to your knowledge by the Committee on or about March 31, 1983?

A Our records show that.

THE COURT: 1980 what?

THE WITNESS: March 31st, 1983, Judge.

BY MR. SHAW:

Q Were you the reviewing judge for Nevada for the Nevada judges on that date?

A No. At that time the changeover had taken place and another member of the Committee received the copies of the amendments.

Q All right. Does this document purport to amend Judge Claiborne's noninvestment income for 1979?

A Yes, it does.

Q What is the dollar amount that Judge Claiborne is now saying that he earned during 1979?

A In this amendment, which he certifies to, the noninvestment income is now 41,073.93.

Q Do you know as of that date, March 31, 1983, whether that was made before or after Judge Claiborne learned that he was under investigation for tax violations?

MR. GOODMAN: Objection, your Honor. That is improper.

THE COURT: Does Judge Decker know and if so, how does he know? I am going to have to take this up in the absence of the jury.

MR. SHAW: I didn't want to say anything in front of the jury. If I could say it at bench, I think we could expedite this, your Honor.

THE COURT: I never saw a bench conference that expedited anything.

MR. SHAW: We have had the testimony from Judge Decker in a previous proceeding where he explained that.

THE WITNESS: Are you asking me whether I was aware of it myself?

MR. GOODMAN: Your Honor, if it please the Court, it doesn't matter with all due respect to Judge Decker what he knows. It matters what Judge Claiborne knows. I submit this is improper.

THE COURT: The only question is whether Judge Decker knows that Judge Claiborne knew whether an investigation was then in process.

MR. SHAW: That's correct.

THE COURT: I don't know whether Judge Decker has talked to Judge Claiborne and so on, but we cannot permit it from a hearsay standpoint.

MR. SHAW: I am helpless because I can't proffer it, but he had testiifed on another occasion.

MR. GOODMAN: Objection.

THE COURT: I don't care whether he has testified on another occasion. He may not have testified because there was no proper objection. There is an objection here. Let me see the transcript if you have it. I will take a look at it.

MR. SHAW: Your Honor, it would be Page 2080.

THE COURT: Well, do you have the New York Times article?

MR. SHAW: We do not have it in the courtroom, certainly not, your Honor.

THE COURT: Without it, that's all he has referred to is the New York Times article. Without it, I don't see how you can go further. That's his source.

MR. SHAW: May I inquire as of him as to his source?

MR. GOODMAN: Objection, your Honor.

THE COURT: It's all hearsay as to what Judge Claiborne might know about it. I don't know. You can prove it by somebody else and if you can't, I feel sorry for you.

MR. SHAW: I agree with the Court. Thank you, your Honor.

THE COURT: Cross-examine?

MR. GOODMAN: Thank you.

CROSS-EXAMINATION

BY MR. GOODMAN:

Q Judge Decker, you are aware, are you not, that Judge Tamm writes hundreds of letters each year to judges where he believes they have not complied with the act to the letter, are you not?

A He writes a number of letters each year, that's true.

Q And these letters written to judges all over the country when Judge Tamm believes that it's necessary to have the reports made more specific or to have information provided to him so that he can make sure that everything is in order; isn't that correct?

A That's correct.

Q Okay.

THE COURT: The letters I know emanate from Judge Tamm. Are they in fact essentially prepared by the reviewer?

THE WITNESS: The reviewer suggests it to begin with, correct. Judge Tamm then looks it over and decides whether or not he is to send it on. At least the material is given by the reviewer.

BY MR. GOODMAN:

Q Would you know, Judge Decker, whether last year there were some 850 letters written as a result of some shortcomings for laws in the reports?

MR. SHAW: Objection. We are not talking about shortcomings and we are not talking about 1983.

THE COURT: Sustain the objection.

BY MR. GOODMAN:

Q But it is a matter of course, is it not, that when Judge Tamm feels that a report should be expanded that he writes to the Judge and gives the Judge an opportunity to comply, correct?

A Yes, he does.

Q Now, as far as this Exhibit No. 39, which you have before you, I believe, and 39A, which is the blowup, it's your testimony, is it not, that if in fact a judge does not have a liability, he complies with the form by placing an "X" in the appropriate place under Item No. 4; isn't that right?

A Under that set of facts, that's correct.

Q And if in fact a judge did not make a loan in the preceding calendar year, he has no obligation to place anything other than an "X" in that particular category; isn't that correct?

THE COURT: You mean make a loan? If a judge does not make a loan. You mean if he does not obtain a loan?

MR. GOODMAN: Well, obtain a loan.

THE WITNESS: Receive a loan.

BY MR. GOODMAN:

Q If a judge does not receive a loan in the preceding calendar year, he is complying with the law when he puts the "X" in that particular spot, isn't he?

A If there was none, there was none.

Q And if he got a gift ten years ago, there would be no requirement to list that under liabilities, would there?

A No.

Q Now, I would like to call your attention to a document which has been marked as Defendant's 2 for identification. Do you have that before you, sir?

A Can you tell me what that was?

Q That apparently is a report which pertains to 1980 and which is signed by Judge Claiborne in May of 1981.

A Yes.

Q All right. I call your attention, sir, to the first third of the page which refers to past fees from legal practice. Is there an amount stated on this document which was submitted to the Ethics Committee?

MR. SHAW: Objection, your Honor. It's not in evidence. He shouldn't read from it.

MR. GOODMAN: Your Honor, this is a matter that we discussed with the Court.

THE COURT: If I rule that it is admissible, Mr. Shaw, will you stipulate that the answer can be read to the jury?

MR. SHAW: Yes. During the defense case. We don't need Judge Decker to come back for that.

THE COURT: I am not going to bring Judge Decker back.

MR. SHAW: I agree.

THE COURT: All right.

MR. GOODMAN: At that point in time then, we will make reference to this.

BY MR. GOODMAN:

Q Are you able to tell us, sir, whether for the calendar year 1980, Judge Claiborne filed a report wherein he listed the past fees from law practice for the preceding year?

A You mean in detail?

Q No. Are you able to tell us yes or no whether he filed such a report?

MR. SHAW: I object, your Honor, it's asking for the same type of information, for him to read off the report?

MR. GOODMAN: I am not asking him to read from a document in evidence. I am asking him from his own personal knowledge whether he knows.

THE WITNESS: He made a simple reference to clients' fees, a generic reference.

BY MR. GOODMAN:

Q For that year?

A Yeah, in the same way that he did the year before.

Q Okay. And when he made that generic reference, he placed down an amount of moneys which he says he received for that generic reference, correct?

A Well, he did.

Q I call your attention to what I believe is introduced into evidence as Government's No. 41, and ask you, sir, whether you are able to --

THE COURT: That has been only permitted with respect to a certain phase.

MR. GOODMAN: That's all I am going to ask him about.

BY MR. GOODMAN:

Q Judge Decker, I would ask you to make reference to the attachment, the two-page attachment appended thereto.

A Can you identify that for me?

Q Government's Exhibit 41, sir.

A Which is what?

MR. GOODMAN: A financial disclosure report.

THE COURT: It's correspondence relating to the financial disclosure report for 1979.

MR. GOODMAN: For '81.

THE COURT: '81? No. Government's Exhibit 41.

MR. GOODMAN: That's what I have.

THE WITNESS: I have 41 here, which is the correspondence.

BY MR. GOODMAN:

Q Is there an attachment, Judge Decker, of two pages which lists various disclosures?

A You are talking about the amendments?

MR. GOODMAN: May I approach the witness.

THE WITNESS: Yes, you may.

THE COURT: Also, there is only one that is relevant.

MR. GOODMAN: I would like to direct him to, and I don't know what he has in front of him other than I have my exhibit marked Government's 41.

THE COURT: You may ask him. I think it's the very last page.

THE WITNESS: Oh, I certainly remember that document. All right.

MR. SHAW: Is there some way Mr. Goodman can identify it for the rest of us?

MR. GOODMAN: It's part of Government's Exhibit No. 41. It's a second of two pages of an attachment and I am directing the Judge's attention to the section which would be the second to last section on the page.

MR. SHAW: Okay.

THE WITNESS: Okay.

BY MR. GOODMAN:

Q All right. I would like to ask you one question about that as far as a declaration as to income for the year 1980. Isn't it a fact that there is a figure of $88,500?

MR. SHAW: Objection.

MR. GOODMAN: The document is in evidence.

MR. SHAW: The Court's ruling did not address any other years other than 1979 for legal fees and this is a document that covers all three years. He is trying to backdoor it.

THE COURT: There is nothing in evidence yet as to the year 1980, except you have marked for identification a financial disclosure report, Mr. Goodman.

MR. GOODMAN: Yes, your Honor, but I believe the Court's ruling was that that particular section was admissible. That was my understanding.

MR. SHAW: It certainly was not.

THE COURT: Let me see it, Judge Decker, if you would.

THE COURT: In the chart that Judge Decker prepared, you may ask him where he got that information from.

BY MR. GOODMAN:

Q Where did you get the information, sir, which refers to $88,400 being income from legal fees for the year 1980?

A I got that from my report.

Q And was that a report that was filed by Judge Claiborne?

A Yes.

Q Thank you. Are you able to tell us, Judge Decker, whether or not in any given year Judge Claiborne was given an extension within which to file his judicial ethics report?

A He was the first year, I know that.

Q Other than that?

A I think he was a little late on one, but we passed it by. I don't recall. I recall the first one, but I don't recall any other one.

MR. GOODMAN: May I have the Court's indulgence, please.

No further questions.

MR. SHAW: Very briefly, Judge Decker. I appreciate your patience.

REDIRECT EXAMINATION

BY MR. SHAW:

Q The $88,500 figure that you referred to was on his '80 report; is that right?

A Yes.

Q And did, on his 1980 report, when he gave that figure as being his legal fees, did he disclose the sources of those legal fees?

A No, he did not.

Q And that was required by law, was it not?

A That's right.

MR. GOODMAN: Objection as being irrelevant.

THE COURT: It's not irrelevant.

BY MR. SHAW:

Q Did Judge Claiborne on that report provide or itemize each of the individual fees or was it the one lump sum?

A It was still just the one lump sum.

Q And the law required him to provide each of the --

THE COURT: He's answered it yes.

THE WITNESS: I answered that as to the other, and the same applied to this report as well as to the others.

MR. SHAW: That will be all.

MR. GOODMAN: No other questions.

THE COURT May Judge Decker be excused?

MR. SHAW: Yes, your Honor.

THE COURT: The Judge is excused.

(Whereupon the witness was excused.)

THE COURT: Members of the jury, you are excused. Now, they may want to revote as to what they want to do, but that's up to them. The marshal will accommodate them with whatever they wish to do.

(Whereupon the jury was excused and the following proceedings were held in open court out of the presence of the jury.)

THE COURT: Gentlemen, I will ask that you take a look at Government's Exhibit 41 and attempt to reach some agreement as to what should be excised. If this exhibit is to go in evidence. My inclination is still that Defendant's Exhibit 2 should probably come in evidence. The chart, of course, did show, as Judge Decker recited, that there was $88,500 reported to the Judicial Ethics Committee even though it was an improper report, but it still, for what it may be worth, has some probative value. Can you reach any agreement as to Government's Exhibit 41, do you think?

I don't suppose it's possible that you two folks, sides, could ever agree on anything?

MR. SHAW: Mr. Goodman called us too agreeable two days ago, your Honor.

THE COURT: I will make some representative of the defense sit at that table and some representative of the Government sit at that table. I don't ask that all of you sit there until you reach an agreement or otherwise get in to see me by the next twenty minutes.

MR. HENDRICKS: Your Honor, if we could do this sitting in chambers and if we could also get a judge to be a party to this, I will bet we could expedite this process.

THE COURT: You have never expedited it with me. I know what I would do, but these things ought to be worked out. You know exactly how I have ruled. I don't see any reason why you can't do the excising yourselves, the physical excising with tape or whatever you have to use to block it out if you want the exhibit in evidence.

All right, gentlemen. How many more witnesses will we have, Mr. Shaw, do you know?

MR. SHAW: Yes, your Honor. Roughly three, your Honor, give or take one.

THE COURT: Probably we will complete the Government's case some time tomorrow morning, and I take it you gentlemen will be ready to proceed with your witnesses?

Please don't forget, gentlemen, that I need some help on the instructions if any are -- Mr. Goodman didn't put this in the record, but he told me that he thought my prior charge was a very fine charge.

MR. SHAW: We will join him in that, but he also said Judge, I will never admit it on the record.

MR. GOODMAN: That was off the record, Judge.

THE COURT: No, that's not off the record. I put it on.

You are trying to accuse me of everything in all my partiality and bias and everything that I have got, so I am going to have a little fun with you.

All right. We will be in recess until 9:30 tomorrow morning.

(Whereupon the proceedings recessed until 9:30, August 4th, 1984.)

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2	Letter dated 5/16/81 from Harry E. Claiborne	

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, SUZANNE KUES ROWE, Certified Shorthand Reporter Number 127, do hereby certify that I was present on the 3rd day of August, 1984, at the hour of 9:30 o'clock a.m. thereof, in the United States District Court, District of Nevada, Reno, Nevada, and reported the proceedings in the within-entitled cause in stenotype notes, which were there-after transcribed by me;

That the foregoing transcript, consisting of pages 188 through 441-a, contains a full, true and complete transcription of my said stenotype notes, and is a full, true and correct record of said proceedings had at said time and place.

DATED at Carson City, Nevada, this 13th day of September, 1984.

Suzanne Kues Rowe

SUZANNE KUES ROWE, CSR, RPR, CP
Nevada CSR No. 127

No. 84-1294

United States Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-appellee

vs.

HARRY E. CLAIBORNE,

Defendant-appellant

ORIGINAL

RECORD IN FORTY-TWO VOLUMES

REPORTER'S TRANSCRIPT

IN FORTY VOLUMES

Appeal from the United States District Court for the

District of NEVADA (RENO)

CR-R-83-57-WEH

VOLUME 33

FILED DECEMBER 13, 1984

PHILLIP B. WINBERRY

Clerk of the United States Court of Appeals

[illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. HARRY E. CLAIBORNE, Defendant.	Case No. Reno, Nevada August 4, 1984 9:30 o'clock a.m.

VOLUME III
TRANSCRIPT OF TRIAL
Before HONORABLE WALTER E. HOFFMAN, and a jury.

APPEARANCES:

For the Government:	STEVEN A. SHAW, ESQ. WILLIAM C. HENDRICKS, III, ESQ. JAN N. LITTLE, ESQ.
For the Defendant:	OSCAR B. GOODMAN, ESQ. WILLIAM J. RAGGIO, ESQ. J. RICHARD JOHNSTON, ESQ.

CERTIFIED TO BE A TRUE COPY
CAROL C. FITZGERALD, Clerk
United States District Court
By Maria Biddle
Deputy Clerk

REPORTED BY: SUZANNE KUES ROWE
CSR NO. 127

CAPITOL REPORTERS
OFFICIAL AND GENERAL COURT REPORTERS
108 W. TELEGRAPH, CARSON CITY, NEVADA 89701
(702) 882-5322

MR. GOODMAN: No objection, your Honor.

MR. SHAW: No, your Honor.

THE COURT: You may advise the marshal, yes, this request will be granted. Advise the juror his request will be granted and make arrangements for a marshal to be present with him tomorrow at such hour as may be appropriate.

MR. SHAW: Your Honor, perhaps in the interest of saving time, I believe during the first trial both sides agreed to the proffer of Russell Olsen's testimony by way of his affidavit, by way of one paragraph of his affidavit that we showed the Court. That, I think, would be a way that would advise the Court.

THE COURT: You mean what some agent would say if he were called.

MR. SHAW: Yes, your Honor, rather than the taking of testimony outside of the jury and delaying this matter further, if it's agreeable with the defense we will use the same procedure we used last time and show you that last paragraph of his affidavit which would generally would be what his testimony would be.

THE COURT: I don't remember the affidavit, but it may have been presented, Mr. Shaw. After all, with nearly 4,000 pages of testimony, I can't be expected to remember the affidavit.

MR. SHAW: That's correct. That's why I was going to offer it to the Court again, if it's agreeable with the defense to make a proffer in that fashion.

MR. GOODMAN: Your Honor, because of the sensitive nature of the potential witness's testimony, we would prefer that it be taken outside the presence of the jury so we hear what he has to say rather than what he substantially is going to say.

THE COURT: Well, if the Government sees fit to produce the person in question, I will hear it in the absence of the jury first.

Brian?

I will file with the clerk the order in question. I don't know which is the original here.

Yesterday we interrupted the testimony of Annette Marie Hensley to take care of Judge Decker's testimony. I take it Ms Hensley is to be recalled, and she may be recalled and we are ready for the jury?

MR. GOODMAN: Excuse me, your Honor. Before the jury is in, could we make a record as to what took place after court yesterday concerning Exhibit No. 41. That's the one.

THE COURT: Of course, Judge Decker actually -- oh, yes. Exhibit 41 you gentlemen have agreed to a certain redaction of certain portions of it and is it ready?

MS LITTLE: Yes, your Honor. I presented the original to Mr. Goodman and gave him a copy and I also have a copy for the court.

MR. GOODMAN: Your Honor, may I be heard?

THE COURT: Yes.

MR. GOODMAN: At this time, your Honor, we have a motion to make which is distinct and apart from the matters pertaining to Government's proposed Exhibit 41. We would move for a mistrial, your Honor, based on Judge Decker's testimony where he indicated that Judge Claiborne's acts were unlawful as far as the way he reported the various matters to the Judicial Ethics Committee. His testimony concerning the illegal activity on the part of Judge Claiborne did not go to the allegations which we are facing in Count VII which pertain to the alleged loan, but rather he attributed unlawful activity to Judge Claiborne in the way Judge Claiborne communicated with the Judicial Ethics Committee about the fees that he received indicating that Judge Claiborne was not complying with the regulations as set forth in the instructions. By virtue of his characterization of unlawful activity which in no way affects charges which we are presently facing, we would at this time move for a mistrial.

THE COURT: Motion denied.

MR. GOODMAN: As to Government's No. 41, as the

Court is aware, yesterday the Government counsel and myself met after court, pursuant to the Court's instruction in an attempt to resolve what parts of Exhibit 41 should in fact be excised. It's our position and the record should clearly reflect that we believe that none of the letters should come in, either Judge Claiborne's letters to Judge Tamm or Judge Tamm's letters to Judge Claiborne. If in fact the Court is going to admit them, we would submit that as to the letter of August 12, 1981, from Judge Tamm to Judge Claiborne, which is the first document on the left-hand side of the exhibit, that the first page, other than, "My Dear Judge Claiborne," and what appears above it, should be excised. The Court made the determination that the first four paragraphs up to the section designated capital "A" were permissible. It's our position that they should not be.

We further submit that the last -- we submit that all matters beginning on Page 2 of that letter in the first paragraph that is included in the excised version beginning at the point at "at the time" and continuing through the remainder of that page, which would be Page 2, and all the way through Page 3 should be excised.

THE COURT: Well, I don't know what specifically you are talking about under Subparagraph (c) that I have permitted to be presented to the jury?

MR. GOODMAN: Yes. May I ask your Honor, do you have the unexcised version in front of you as well?

THE COURT: No.

MR. GOODMAN: That's where the problem is then. I don't have an extra.

THE COURT: Do we have the original of Government's Exhibit 41 that was presented which was maintained of course in the regular course of business? I thought that the Government had it, probably by permission of counsel.

MR. GOODMAN: May I give it to the Court, please?

THE COURT: Yes.

MR. GOODMAN: I am referring now to Page 2, your Honor, of the August 12 letter, and we would submit that that portion beginning under "C", and it would be five lines down with the words, "At the time," and continuing through to remainder of the page be excised.

There has been agreement that Page 3 is in fact completely excised and that the remaining portion of Page 4 remains as is. Those are our objections.

THE COURT: The only thing I do recall is that, and I guess it's been excised.

There are two sets. One starts the fourth line down and then some and then beginning Line 11 or approximately that, says, "At the time of my appointment, I was a sole practitioner."

That's the redacted version.

MR. GOODMAN: Right. I am referring to, "At the time that you reported the item of attorney's fees in your 1979 report, our instructions provided..."

THE COURT: You want that in?

MR. GOODMAN: I want that out.

THE COURT: Well, I don't see it in the redacted version.

MR. GOODMAN: We are referring to the August 12, 1981, version. It would be the second page, Page 2, at the top.

THE COURT: I see what you are talking about, yes. You are objecting to what the instructions provided?

MR. GOODMAN: Yes, your Honor.

THE COURT: All right. Your objection is noted. I will tell the jury, of course, that the part that has been presented merely confirms what Judge Decker said the instructions were anyway.

In any event, I yielded to the redaction under your suggestion that Rule 403 should be applied, although I think it clearly, under the record provisions, Chapter 8, I believe it is in the Federal Rules of Evidence, that in all probability the entire matter would be introduced.

But I have attempted to redact it as much as is reasonably possible to comply with the charges.

MR. GOODMAN: As to the rest of the document, there has been agreement and the redacted version does meet with our approval as far as agreement, even though our objection continues to be lodged.

THE COURT: All right.

Call the jury.

MS LITTLE: Two other administrative matters, your Honor. We have a memorandum concerning character witnesses of the defendant should he decide to put any on. What we have done is just copied the memorandum we submitted last time and we are resubmitting that for your consideration. Also, we have some items that we would like the Court to take judicial notice of. I will pass these up to your Honor.

THE COURT: Of course, as to the character witness fees, I don't know whether we are going to get into that at all.

MS LITTLE: Nor do we. We have just submitted this.

THE COURT: Well, my ruling would be the same as I previously made. I gave a memo to counsel that is not in the record on the character witness phase of the last trial and I see no reason to change it.

If you would check, gentlemen, the judicial notice phase which merely says certain dates fell on a Monday, Tuesday or whatever it may be, I have a right, of course, to take judicial notice of those dates.

(Whereupon the following proceedings were held in open court before the jury.)

THE COURT: Good morning, ladies and gentlemen. One of the jurors sent me a note and I have granted that request. Whoever the juror may be, if you will make arrangements with the marshal for tomorrow, that will be satisfactory.

If you will recall, yesterday we interrupted the testimony of Annette Marie Hensley because we had to accommodate Judge Decker, in order to get him back to Chicago.

I believe Miss Hensley was then on cross-examination or direct, do you recall?

MR. HENDRICKS: I had finished my direct examination, your Honor.

THE COURT: All right.

ANNETTE HENSLEY, GOVERNMENT'S WITNESS, SWORN

CROSS-EXAMINATION (Resumed)

BY MR. GOODMAN:

Q Good morning, Miss Hensley.

A Good morning.

Q Miss Hensley, I would like to show you Defendant's

Exhibit No. 2 for identification and with the Court's permission I will hand it to the witness.

THE COURT: All right.

BY MR. GOODMAN:

Q I would like to ask you, ma'am, whether or not that document was received by your office and maintained by you in the ordinary course of your business affairs?

A Yes, it was.

Q Are you the custodian of that document?

A Yes.

Q And is that document relied upon by you in the day-to-day activity of the Committee?

A Yes.

MR. GOODMAN: At this time, your Honor, we would move the admission of the first two pages of the report of that marked exhibit.

THE COURT: The entire document?

MR. GOODMAN: No, just the first two pages which would be the report, the rest is really irrelevant to our position.

MR. HENDRICKS: May I see what you have?

THE COURT: All right. I will admit that document. It consists of only one-page, but it's written on both sides.

MR. GOODMAN: I didn't realize that. I have two pages.

THE COURT: Well, I hunted for the second page. Do you want -- you only want this report?

MR. GOODMAN: That's correct, your Honor.

THE COURT: All right.

Miss Hensley, is this the original?

THE WITNESS: Yes, it is.

THE COURT: Do you have a copy?

THE WITNESS: I have a copy.

MR. GOODMAN: I have no objection if we want to substitute a copy for the original.

THE WITNESS: I would prefer that.

MR. GOODMAN: I have no problem with that.

THE COURT: All right. If you have a copy available, or we can make one available, the copy may be substituted for the original.

THE WITNESS: I don't have a copy with me, but I have a copy in my office.

THE COURT: Oh, you have a copy in your office?

MR. GOODMAN: I have no objection if his Honor's clerk would like to make a copy, and we could submit the copy in lieu of the original.

THE COURT: That will be fine. We will arrange to get a copy substituted if the machine turns out properly. Sometimes these xerox machines don't do too well.

I will let one of the deputy clerks make a copy at this time.

MR. GOODMAN: Fine. Perhaps we could do it after the witness testifies, so she could refer to it.

THE COURT: Yes. You may need it further.

Are you going to question her any about it?

All right. Let me have the exhibit back.

(Whereupon Defendant's Exhibit 2 was duly admitted into evidence.)

BY MR. GOODMAN:

Q Miss Hensley, what is exhibit, Defendant's Exhibit 2?

A Judge Claiborne's financial report for calendar year 1980.

Q And does it reflect on the part of the report noninvestment income any material?

A Yes.

Q And would you please tell the ladies and gentlemen of the jury what the document reflects?

A Past fees from law practice, $88,500.

MR. GOODMAN: Thank you, I have no further questions.

THE COURT: Redirect?

MR. HENDRICKS: No questions, your Honor.

THE COURT: All right. May Miss Hensley be excused then?

MR. GOODMAN: Yes, your Honor.

MR. HENDRICKS: Yes, your Honor.

THE COURT: Miss Hensley, maybe you can have enough influence with the clerk's office to get that copy made and bring it back in to one of the deputy clerks, if you will.

(Whereupon the witness was excused.)

THE COURT: Who is the next Government witness?

MR. SHAW: Your Honor, the next witness would be the one that we discussed earlier that was going to require some voir dire testimony.

THE COURT: All right. Members of the jury, I will not give you your midmorning break, but I will have to ask that you retire.

(Whereupon the jury was excused and the following proceedings were held in open court out of the presence of the jury.)

RUSSELL W. OLSEN, GOVERNMENT'S WITNESS, SWORN

VOIR DIRE EXAMINATION

BY MR. SHAW:

Q Would you give your name, please, sir, and spell your last name?

A Russell W. Olsen, O-l-s-e-n.

Q How are you employed, Mr. Olsen?

A I am employed by the Internal Revenue Service in Las

Vegas.

Q How long have you been employed with the IRS in Las Vegas?

A Since July 1st, 1970.

Q What type of work do you do with the IRS?

A I am a field examiner. I examine corporate tax returns, individual tax returns, partnership tax returns.

Q Do you also, on occasion, testify as an expert witness in court?

A Yes, I do.

Q Did you testify in a case entitled United States vs. Richard Gordon?

A Yes, I did.

Q And at some time after that -- well, first of all, was that testimony before Judge Harry Claiborne?

A That was a bench trial, yes.

Q And at some time after the conclusion of that trial, did you have a conversation with Judge Claiborne concerning that trial?

A Certain aspects of it, yes, sir.

Q First of all, what was the verdict in the trial?

A Mr. Gordon was found guilty.

Q Could you tell us just very generally what the issues were involved in that trial?

A As I recall, Mr. Gordon had received a finder's fee from I believe it was some dealing with or around Caesar's Palace. He had introduced individuals owning a casino to another individual who subsequently purchased that and for that introduction he had received a fee of, I believe it was $240,000. One of the issues in that case was that he had received I believe it was eight cashier's checks for that amount, and he had deposited I believe it was seven checks into his checking account and one of those checks had been used to pay off a marker or an IOU at one of the casinos.

Q What was the criminal charge?

A The criminal charge, I believe it was evasion under 7201 and filing false tax returns under 7206 of the Internal Revenue Code.

Q Basically, failure to report those specific items?

A Yes.

Q Including the item that was used to pay off a marker at a casino?

A Yes.

Q Could you tell us approximately how much time after the conclusion of the trial that you had this conversation with Judge Claiborne?

A Approximately two to three months.

Q Could you tell us where that occurred and what was said?

A As I recall I was coming back from lunch and entered the federal building through the rear doors. As I was entering into the building, his Honor, Judge Claiborne, and his secretary were also entering. We engaged in conversation at that time and the conversation basically took place at the elevators on the first floor.

Q Could you tell us what was said by both you and Judge Claiborne?

A In my position, I attempt to gain experience and knowledge from each case and because it was a bench trial, I inquired of his Honor as to what evidence, if there was any particular evidence that he relied upon in making a determination of finding the defendant guilty?

Q What did he say?

A He stated that when the one cashier check was introduced into evidence and that through testimony and the check itself, the evidence was established that it had been used to pay off an IOU marker. He made the statement something to the effect that no one forgets that type of transaction or that type of money as far as reporting.

Q Was it the defense that Mr. Gordon presented that he had forgotten about that cashier's check?

A As I can recall the defense, the defense was that he had submitted either all eight cashier's checks or copies of all eight cashier's checks to his accountant and the accountant had omitted the one check.

MR. SHAW: Thank you. That's all.

MR. GOODMAN: Your Honor, I would like to be heard on that if I may. We would object to his testimony because it was predicated upon --

THE COURT: Do you have any questions of the witness?

MR. GOODMAN: No, not at this time.

We would object to this testimony predicated on the fact that the witness's final comments are based on hearsay and on an assumption on his part as to what the factual background of the case was.

THE COURT: I agree with you there. As to the last part of it that he recalls Mr. Gordon's defense was that he had reported the matter to his accountant and so on. I agree with you.

MR. GOODMAN: Because the essence of it, and I was Mr. Gordon's attorney at that time, the essence of it was that he did not report that one cashier's check upon which Judge Claiborne found him guilty to his accountant and that was the distinction and that was the difference. That's the problem that we have when we permit a witness to testify as to a conversation without --

THE COURT: That had nothing to do with Judge Claiborne's conversation with him. I am talking about --

I will agree with you that this witness would have no right to testify before the jury what Gordon's defense was.

MR. GOODMAN: The problem that I have on my cross-examination of this witness is to bring out from this witness an understanding that in fact the facts of the Gordon case were separate and distinct from the facts upon which the Government is basing their prosecution here.

It's our theory of defense as the Court is well aware that Judge Claiborne made full disclosure of all of his income from private practice to his accountants or bookkeepers, and Gordon, the issue was, your Honor, that one of the checks Gordon forgot to tell his accountant about. It makes it apples and oranges, and it is going to confuse the jury.

THE COURT: I don't know what questions you are going to ask this witness. That's up to you, of course, but I am excluding the last portion of Agent Olsen's testimony as far as the jury is concerned, that is what the defense was and so on.

MR. GOODMAN: But I am not making myself clear. Let me try again if I can. The only way I submit that the witness's testimony --

THE COURT: Why don't you ask this witness what question, the same questions you would ask him if the jury was there, if I permit it in, just the portion of his conversation with Judge Claiborne.

MR. GOODMAN: I will ask him one or two questions along that line at this time.

VOIR DIRE EXAMINATION

BY MR. GOODMAN:

Q Isn't it a fact, Mr. Olsen, that Judge Claiborne said the aspect of Mr. Gordon's conduct which disturbed him was that he forgot to tell somebody about this check he received?

A That's not my recollection, Mr. Goodman.

MR. GOODMAN: Well, then, I will take him on cross-examination.

THE COURT: All right. That's the only portion of it you object to?

MR. GOODMAN: No, I object to his entire testimony because --

THE COURT: You haven't said that.

MR. GOODMAN: I object to his testifying at all. I am saying the reason I don't believe the witness should be able to testify is, number one, this is not an admission by Judge Claiborne. It's not an exception to the hearsay rule as far as the statement by Judge Claiborne as I understand the hearsay rule.

THE COURT: I don't agree with you there.

MR. GOODMAN: And number three, to permit this witness to testify as to a casual conversation about a set of facts which is different from the set of facts in this case, I submit is unfair and that the prejudicial effect outweighs any probative value of it under 403.

THE COURT: Well, specifically when you asked Judge Claiborne on the first floor near the elevator what evidence did he rely upon in finding Gordon guilty, what specifically now did Judge Claiborne say?

THE WITNESS: To the best of my recollection, your Honor, he stated that when the one check, which had been used to pay off the IOU or the marker at the casino was introduced, that that, he made the statement that no one forgets that kind of money. Something to that effect.

THE COURT: Pay off the IOU. Now, my problem with this situation is the fact that at present at least the mere fact that checks are cashed at a casino does not carry with it an inference that it's cashed for the purpose of paying off a gambling debt.

MR. SHAW: No, your Honor. The issue being, in both instances, it was negotiated at a casino for two different purposes. The point is it was negotiated here and is probative in both instances of the intent.

THE COURT: What is it probative of? I haven't had to do it this time, but on my last trip out here, I had to get a check cashed, two checks cashed at the Hilton, and upstairs they don't cash checks like a regular hotel there. They send you to the casino and there you establish a line of credit, and they either mistakenly or perhaps justifiably gave me credit. So I cashed a couple of checks while I was there.

Now, I have been very careful not to become engaged in any type of gambling since here for fear that either the Government or the defense would have a photographer over my shoulder in seeing me pulling one of those one-armed bandits.

MR. SHAW: That's our position, your Honor. If those were, you recall that you do not and if those were income checks, you would report them.

THE COURT: Well, that was my personal check.

MR. SHAW: I am saying you recall that though?

THE COURT: Yes, I recall it. But the difference here is that this witness has said and Judge Claiborne has said that when a check was used, a check for $10,000 apparently was used to pay off an IOU due to the casino, that refers to a gambling debt which Judge Claiborne said to the agent that that was enough for him.

Now, we don't have any evidence in this case yet that these various checks that were cashed at casinos by Judge Claiborne were used to pay off gambling debts. They may have been, but there is no evidence of it.

MR. SHAW: We don't suggest that there will be evidence of that. The point is that in both instances, there was a transaction that occurred at a casino as opposed to cashing a check at a bank where there would be a paper trail and there is some probative value to that. Apparently there is a probative value to Judge Claiborne when he found him guilty.

THE COURT: You may argue perhaps successfully and perhaps unsuccessfully that there were banks closer to the courthouse than the Horseshoe Casino and that's entirely proper, but the mere fact that he made a statement to Agent Olsen that he didn't approve in any sense of the word of a person taking a check and using it to pay off a gambling debt due to the casino, when we haven't got any evidence here of that, and you suggest there may not be any evidence of that, I think it may tend to prejudice this jury.

MR. SHAW: We have got to prove the state of mind of this defendant, not the material facts of where things were cashed.

THE COURT: If the defendant had said, "I disapprove of anybody cashing checks at a casino and then not reporting that as income," which obviously came to Mr. Gordon from another course, that's different. But what he disapproved of was using that check to pay off a gambling debt.

He made a finding as to Mr. Gordon's state of mind.

MR. SHAW: He made the same finding at the time of sentencing. It's exactly the same thing that I raised in this memo that I filed this morning. But he does not disapprove of people cashing checks at casinos. He disapproves of cashing checks at casinos for the purpose of using those checks and not reporting them as income when he should have reported them as income to use that check for the purpose of paying off a gambling debt. That is a different ruling.

Except he was finding that last element because of the transaction at the casino. He was making a finding that the intent to evade taxes --

THE COURT: I will sustain the objection.

MR. SHAW: Thank you, Mr. Olsen.

THE COURT: All right. Do you need Mr. Olsen to remain any longer?

MR. SHAW: Apparently no, your Honor.

THE COURT: Thank you, Mr. Olsen.

(Whereupon the witness was excused.)

(Whereupon the following proceedings were held in open court before the jury.)

THE COURT: Members of the jury, the witness on the stand has been duly sworn.

ROBERT N. DYAS, GOVERNMENT'S WITNESS, SWORN

THE COURT: State your name and spell your last name if you will, please.

THE WITNESS: My name is Robert N. Dyas, D-y-a-s.

DIRECT EXAMINATION

BY MR. HENDRICKS:

Q Mr. Dyas, could you give us, please, your address?

A Yes, I live in Clayton, California.

Q And can you tell us your occupation, please?

A Yes. I am a technical adviser with the office of the District Counsel in San Francisco, that's the District Counsel for the Internal Revenue Service.

Q Mr. Dyas, could you please describe your educational background for us?

A Yes. I graduated from Drake University in Des Moines, Iowa, in 1950 with a major in accounting. After I became employed with the Internal Revenue Service, I have attended various courses and continuing professional education seminars.

Q Do you hold any public licenses or certifications?

A Yes, I do.

Q Could you tell us what those are?

A I am a certified public accountant in Nebraska since

1953. I am also a certified public accountant in Illinois since 1979, and I am registered as a public account in Illinois.

Q And are you a member of any professional organization or societies?

A Yes. I am a member of California Society of Certified Public Accountants.

Q Mr. Dyas, when were you first employed by the IRS?

A In November, 1950.

Q What capacity?

A I was first employed as an internal revenue agent.

Q Could you tell the ladies and gentlemen of the jury what an internal revenue agent does and in your case, how frequently you did it?

A Yes. An internal revenue agent generally is assigned to conduct audits or examinations of tax returns and make reports on them.

During my time as an internal revenue agent, I conducted about 320 examinations or audits involving 450 tax returns, including individual income tax, corporation income tax, employment tax and excise taxes.

Q Now, sir, let me ask you to address your attention to the period of 1954 and '55, did you hold during that period of time any other positions with the IRS?

A Yes, I did.

Q What was that?

A I was an accountant and auditor for the appellate division of the Internal Revenue Service.

Q What were your duties as an accountant and auditor?

A By way of background, the appellate division handles civil cases in which the Government and the taxpayer have not agreed as to the tax liability. My duties at that time included making recomputations of income and tax in the cases which had been settled by the appellate division. Other duties included making recomputations of tax in cases decided by the tax court of the United States, and in unagreed cases, I also made the computations in preparation of what are known as statutory notices of deficiency which is the Internal Revenue's notice to a taxpayer that they contend that he owes certain additional tax.

Q And how long, sir, have you been a technical adviser?

A I started as a technical adviser in August, 1955, in Omaha, Nebraska.

Q And you continued in that capacity since that time?

A Yes, I have.

Q Could you relate to the ladies and gentlemen of the jury your duties as a technical adviser?

A Yes. One of my primary duties is to assist the lawyers in the office of Regional Counsel or District Counsel, and in reviewing criminal tax fraud cases during the approximate 29 years that I have been a technical adviser, I have reviewed and made computations in over 1400 cases.

Q Had you had occasion during that period of time to teach courses in this area?

A Yes, I have. I have taught many times in courses involving tax fraud and in summary witness work such as I am doing now.

Q And have you had occasion during the period of time that you have been a technical adviser to testify in court as a summary witness?

A Yes, I have.

Q On approximately how many occasions?

A In excess of 20 times.

MR. HENDRICKS: At this time, your Honor, I would submit Mr. Dyas as an expert witness.

THE COURT: Are there any questions on voir dire with respect to the expertise of Mr. Dyas?

MR. JOHNSTON: We will stipulate to Mr. Dyas's qualifications.

THE COURT: Stand up, if you will, please, Mr. Johnston.

MR. JOHNSTON: We will stipulate to Mr. Dyas's qualifications as an expert, your Honor.

THE COURT: All right. You may proceed then, Mr.

Hendricks.

MR. HENDRICKS: Thank you, your Honor.

BY MR. HENDRICKS:

Q Mr. Dyas, have you listened to the testimony of all the witnesses in this case up to this point?

A Yes, I have.

Q And have you reviewed all of the documents in evidence in this case?

A Yes, I have reviewed them.

Q Let me, for purposes of your reference, give you the number of documents now which have been introduced into evidence in this case so that you can refer to them as you need to during the course of your testimony.

Mr. Dyas, referring first to the tax year 1979, have you made certain computations and calculations regarding that year?

A Yes, sir, I have.

Q All right. Could you tell us what the total income was for Harry E. Claiborne reported on his 1979 income tax return?

A Yes, sir. In answer to your question, I am referring to Government Exhibit 3, which is the 1040 individual income tax return of Judge Claiborne, and the total income appearing at Line 22 on Page 1 of that return is $80,227.04.

Q Okay. Were you able to determine what this total income figure was made up of?

A Yes, I was.

Q And what was it?

A It consisted of wages, $54,499.92, interest income of $4,079.29, and business income of $21,641.87.

Q Where did you get those figures?

A Those figures appear respectively on Line 8, Line 9 and Line 15 on Page 1 of the 1979 income tax return, which is Government Exhibit 3.

Q Okay. Did you independently tabulate those three figures?

A Yes, sir, I did.

Q And what total did you arrive at?

A I arrived at the same total, which appears on the return, namely $80,227.04.

Q All right. Now, as to the legal fee component of total income, that is the $21,647.87 that's reported, were you able to determine how that legal fee figure was calculated?

A Yes, I was able to.

Q What evidence, sir, did you use in making your independent determination as to that calculation?

A First of all, I use exhibits which were identified by Mr. Joseph Wright, the preparer of the 1979 return, which were exhibits 29 and 31.

In addition to that, I used income checks which have been received in evidence in Exhibit 6 and in Exhibit 9.

I also, in addition to those documents, relied on the testimony of Mr. James Brown and Mrs. Annette Quintana.

Q And how did your computations compare with the computations that were testified to as having been done by Mr. Wright?

A I checked those computations and as a result of that, I came out exactly the same as Mr. Wright did in his calculations.

Q So using the same information he had, you arrived at exactly the same figure he arrived at?

A Yes, sir, I did.

Q Have you determined for the year 1979, Mr. Dyas, whether there was any unreported legal fee income for the tax year 1979 for Judge Harry E. Claiborne?

A Yes, sir, I have.

Q And what did you use to make the calculations as to unreported legal fee income?

A First of all, I used the information which I have previously referred to, the documents produced by Mr. Wright which were Exhibits 28 and 31. I of course used the 1979 income tax return itself. I relied on the checks and the testimony, the checks produced by Mr. Brown and his testimony which are in Government's Exhibit 6. I also relied on the testimony of Miss Quintana and the documents which she produced which are in Government's Exhibit 8, a series of five transmittal letters and a series of five cashier's checks which are in Government Exhibit 9.

Q All right.

A In addition to that, in making this determination, I also analyzed what happened with those checks.

Q Okay.

MR. HENDRICKS: If I might just take a moment and bring this easel over here.

MR. JOHNSTON: Before this is displayed to the jury, may we have some foundation?

THE COURT: Yes. You may turn it around and examine it.

BY MR. HENDRICKS:

Q Just by way of foundation, Mr. Dyas, let me show you a chart which has been marked -- I am not sure that the jurors on the end of the jury can see that.

MR. JOHNSTON: Your Honor, it's not in evidence yet. The jury really isn't entitled to see it yet. The witness ought to have a smaller version of this that he can testify to.

MR. HENDRICKS: I would be happy to do that, your

Honor, to decrease Mr. Johnston's pain and suffering.

MR. JOHNSTON: I would take exception to that comment, your Honor.

BY MR. HENDRICKS:

Q Mr. Dyas, do you have a chart for the year 1979, a copy, a photocopy of a chart for 1979?

A Yes, I have a photographic reproduction of it here.

Q Which has been identified as Government's Exhibit 42, proposed?

A Yes, sir, I think I actually have a work copy of it, but because it's a photographic reproduction.

Q Does the chart display the findings and determination you have made with respect to the original, that is, of your photograph, display the findings you made with respect to unreported legal fee income for 1979?

A Yes, sir, it does.

Q Now, did you make the original chart here?

A No, sir, I did not.

Q Well, was it made to the best of your knowledge in anticipation of trial?

A Yes, it was.

Q Have you checked it very carefully for accuracy?

A Yes, sir, I have.

Q And have you compared it against the documents that have been introduced in trial and all the testimony that you have heard to this point?

A Yes, sir, and I have made my own independent calculations as a way of verifying that chart.

Q And is it accurate, according to the calculations that you have made based upon the evidence in this case?

A Yes, sir.

Q Would it be of assistance in explaining your findings?

A Yes, it certainly would.

MR. HENDRICKS: I would move the admission of the chart, Government's Exhibit 42.

MR. JOHNSTON: No objection.

THE COURT: Let it be admitted.

Government's Exhibit -- what number was it?

MR. HENDRICKS: 42, your Honor.

(Whereupon Government's Exhibit 42 was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Okay. Mr. Dyas, perhaps -- I see you have a copy of it. If you would testify as to your findings for 1979, and I will point to the parts relating to your testimony, why don't you proceed and tell the ladies and gentlemen what determinations you made.

A All right, sir. By way of explanation, the first portion of the chart or the headings on the chart are headed "Date", "Check Number", "Amount", "Reported" and under that "Deposited." On the far right side, "Unreported", "Deposited" and "Cashed." Two headings under "Unreported."

And directly below that is the caption "Checks Issued by James J. Brown." Mr. Brown appeared here as a witness and identified the checks which are contained in Government's Exhibit 6.

The first item shown on the large chart is check number 1024, which was dated January 5th, 1979, payable to the order of Harry E. Claiborne in the amount of $3,381.10. The check was signed by James J. Brown as the maker.

This check and all of the checks which follow it have a preprinted heading on them, James J. Brown, Professional Corporation, Limited Trust Account, with an address in Las Vegas.

Q Were you able to determine what disposition was made -- what happened to that check?

A Yes. That check was deposited in Judge Claiborne's bank account at Pioneer Citizens Bank, and that is shown by bank records which were included in Government's Exhibit 14.

Q Okay. Is that deposit shown on the chart?

A Yes, it is. It's the yellow indicator under column headed "Deposited."

Q What was the next item of unreported income that you were able to determine for the year 1979?

A All right. Incidentally, that check is shown in the column as, by way of absence as not being reported.

The next check, in response to your question, was check number 27, also issued by Mr. Brown. The check itself was dated January 19th, 1979. The amount of the check was $17,500. $10,000 of that check was reported and included on the 1979 income tax return of Judge Claiborne.

Q And is that reflected on the chart?

A Yes, sir, it is.

Q That's the blue block which is slightly more than one-half of the total, which is reflected under the column "Reported" and "Deposited"?

A Yes, sir, that's correct. And that check also was deposited in Judge Claiborne's bank account at Pioneer Citizens Bank on February 2nd of 1979. That check also is included in bank records which are in Government's Exhibit 14.

THE COURT: I understand the entire check was deposited, but only $10,000 reported on the tax return?

THE WITNESS: Yes, sir, your Honor, that is reflected by Government's Exhibit 28, the amount of that check which was reported and ultimately included in the 1979 income tax return.

BY MR. HENDRICKS:

Q And is the unreported portion graphically displayed here?

A Yes, sir, it is.

Is it shown under the column "Unreported Deposited". So the portion which is not reported is shown as unreported, but deposited.

Q Now, would you identify the next item of unreported income for 1979?

A Yes, sir. That also is a check issued by Mr. Brown on January 26th, 1979. That was check number 1031. The amount of the check was $833.33, and that check was not reported or included on the 1979 income tax return. I determined that by reference to, again, the tax return itself and also Mr. Wright's work papers, Government's Exhibit 28 and 31. That check was cashed at the Horseshoe Club, and that is based on the testimony of Anita Praytor, who produced these checks -- I am sorry, who identified these checks and was a witness from the Valley Bank of Nevada.

Q And is the cashing of this check for $833.33 reflected on the chart?

A Yes, sir, it is. It's reflected as having been cashed.

Q "Unreported" and "Cashed"?

A Yes.

Q Okay. What is the next item of unreported income for

1979?

A The next item of unreported income was a check issued by Mr. Brown on January 26th of 1979. That was check number 1032. The check was $84.38. That check was not reported. That check was disposed of by deposit into Judge Claiborne's account at Pioneer Citizens Bank on February 2nd of 1979. That, likewise, is shown by the bank records in Government Exhibit 28.

Q What is the next item of unreported income for that year, sir?

A The next item of income was a check issued by Mr. Brown on Feburary 15th, 1979, check number 1034. The amount of the check, $1,106.66. That check was not reported as is reflected on the chart.

Q What happened to it, if you are able to determine?

A Yes, sir. If I may look at the check itself. That check also was cashed at the Horseshoe Club on February 23rd, 1979.

Q And is that cashing of that unreported check reflected on Government's Exhibit 42?

A Yes, sir, it is.

Q Okay. All right, sir, now what is the next item of unreported income for 1979?

A Actually, there is a check, if you are going chronologically, there is a check that intervenes. The check issued on July 19th. That was a check issued by Mr. Brown. It was check number 1051. The check was for $10,000 -- pardon me, for $7,000 and that check was one of the items reported on the income tax return. That check was disposed of by deposit into Judge Claiborne's account at Pioneer Citizens Bank on August 10th of 1979, and the bank records relating to that are Government's Exhibit 19.

Q That one is shown here on the chart as having been reported?

A Yes, sir. It was fully reported and was deposited.

Q What is the next item of legal fee income?

A All right. The next item is a check issued by Mr. Brown dated August 31st, 1979, that's check number 10 --

THE COURT: Pardon me, Mr. Dyas. Mr. Goodman, you and Mr. Raggio, if you are going to even whisper, I will have to ask that you go back to the bench. I can't hear you, but I saw you and I have no control over it, but I, if it got to the jury's ears, it might create a false impression of some type.

Sorry to interrupt you.

THE WITNESS: Thank you, your Honor.

I had started to speak about check number 1061, which was issued by Mr. Brown on August 31st, 1979. The amount of that check was $2,905.90. It was not reported on the 1979 income tax return. That check was disposed of on

September 6th, 1979, by being cashed at the Horseshoe Club as shown by the stamp on the back of the check itself.

BY MR. HENDRICKS:

Q Okay. What's the next item of legal fee income for '79 that you were able to locate?

A All right. The next check is a check dated November 13th, 1979, that's check number 1093, in the amount of $3,011.56. That check also was not reported on the 1979 income tax return. Likewise, that check was cashed at the Horseshoe Club on November 19th, 1979.

Q And that cashing is similarly reflected on the chart, is it not?

A Yes, sir, it is.

Q Okay. What's the next item of unreported legal fee income in 1979?

A All right. The next check issued by Mr. Brown was dated November 13th, 1979, being check number 1094 in the amount of $250. That check was not reported on the return, however, it was deposited on November 20th in the Pioneer Citizens Bank account of Judge Claiborne, and the bank records which show that are in Government Exhibit 20.

Q Okay. And that deposit, unreported deposit, is reflected on the chart?

A Yes, sir, it is.

Q Okay. Now, were you able to determine additional legal fees for 1979?

A Yes, sir, I was.

Q Could you tell the ladies and gentlemen of the jury what that was?

A Yes, sir. Annette Quintana testified to her fee arrangement with Judge Claiborne and also identified a series of five transmittal letters and also a series of five cashier's checks which respectively are Government Exhibits 8 and 9.

Government's Exhibit 8 are simply the transmittal letters which Miss Quintana testified were used to transmit or mail these checks to Judge Claiborne. The checks themselves, which were cashier's checks issued by Valley Bank of Nevada, are included in Exhibit 9.

Q What is the first of those items that appears?

A The first of those items is cashier's check number 155176 issued on January 16th, 1979, by Valley Bank. The check is payable to the order of Harry E. Claiborne in the amount of $1,000 and the check is shown as purchased by Annette E. Quintana.

Q Is that check shown on the chart here?

A Yes, sir, it is.

Q The one I am pointing to now?

A The first item under the heading "Checks Issued By Annette Quintana."

Q What happened to that check?

A That first check was cashed at Holiday Hotel and Casino. And I reach that determination based on the endorsement on the back of the check itself as well as the testimony of Danny Huckaby who appeared here as a witness.

Q And was it reported?

A No, it was not.

Q Is the cashing and unreporting of that check reflected on the chart?

A Yes, sir, it is, and the -- in the extreme right-hand column with the yellow block.

Q Okay. What is the next item of legal fee income received here on the chart from Annette Quintana?

A All right. Again referring to the checks in Government Exhibit 9, there was the check issued by Valley Bank of Nevada on February 12th, being check number 155933 in the amount of $1,000.

Q What happened to that check?

A That check was cashed on February 13th, 1979, at the Horseshoe Club.

Q Okay. Is that reflected on the chart?

A Yes, sir. Again, that is reflected in the extreme right-hand column by the yellow block in the cashed, unreported column.

Q Was any part of that check reported as income?

A No, sir, it was not.

Q All right. What's the next item of legal fee income for 1979?

A It's the third in the series of these cashier's checks being dated March 9th, 1979. It was cashier's check number 156708, issued by Valley Bank of Nevada in the amount of $1,000.

Q And what happened to that check?

A That check also was cashed at the Horseshoe Club on March 12th, 1979.

Q Was it reported?

A No, sir, it was not.

Q And is that reflected on the chart?

A Yes, sir. Again in the right-hand column, it's being reflected as unreported and cashed.

Q Okay. What's the next item received from Annette Quintana?

A All right. The next item is a check issued by Valley Bank on April 12th, 1979, being check number 157759, also in the amount of $1,000.

Q What happened to that check?

A That check was deposited in Judge Claiborne's bank account at Pioneer Citizens Bank and it was one of the items reported on the income tax return, specifically it is reflected as one of the items deposited which are shown on Exhibit 28, which was the work paper note produced by Mr. Wright.

Q That's shown clearly on the chart here?

A Yes, sir. It's shown as being deposited and reported.

Q Okay. And what is the next item of legal fee income received from Annette Quintana in 1979?

A All right. That's the last of the series of five cashier's checks which was issued by Valley Bank of Nevada. It was dated May 14th, 1979, being check number 159233, and also in the amount of $1,000.

Q And what happened to that check?

A That check also was cashed at the Horseshoe Club on May 21st, 1979.

Q And was it reported?

A No, sir, it was not.

Q And is that fact that it was unreported and cashed at the -- cashed reflected on the chart?

A Yes, sir, it is shown in the extreme right-hand column of the chart by the yellow block on that line.

Q Now, Mr. Dyas, with respect to all of these items of unreported income in 1979, how do you know that they were not reported?

A I know that they were not reported by making an analysis of what was reported on the income tax return and that is based on the Government's Exhibits 28 and 31 which were produced by Mr. Wright. These specific items making up the income reported on the return can be determined by an examination and analysis of those documents, and the total reported on the income tax return was $22,332.87.

Q Okay. Now, as a result of your calculations and your determinations as to legal fees received in 1979, did you reach a total of those figures?

A Yes, sir, I did.

Q And is that total shown on the chart here?

A Yes, it is.

Q And what is that figure?

A That figure is $41,072.93.

Q Okay. And did you determine again what the total legal fees were that were reported by Judge Claiborne?

MR. JOHNSTON: Objected to as already asked and answered.

THE WITNESS: Yes.

THE COURT: I will permit it.

THE WITNESS: Yes, sir. The amount of legal fees reported was $22,332.87.

BY MR. HENDRICKS:

Q Okay. Where did you get that figure?

A Again, that figure is --

MR. JOHNSTON: Same objection, your Honor. It's already been asked and answered.

THE COURT: I will permit it.

THE WITNESS: Again, that figure is shown on Government's Exhibit 3, which is the 1979 income tax return filed by Judge Claiborne.

BY MR. HENDRICKS:

Q Okay. Is that -- that is shown on the chart, is it not?

A Yes, sir, it is.

Q And I notice that there is another block here which is characterized as "Unreported." Can you tell us what that figure is?

A Yes, sir. That figure is $18,740.06.

Q And how was this figure, the $18,740 figure arrived at?

A It was simply arrived at by deducting the $22,332.87 from the $41,072.93.

Q Mr. Dyas, looking at the bottom of the chart, if you would --

A Yes, sir.

Q -- what does the information on the left-hand side of the bottom part of Government's Exhibit 42 show?

A All right. That is headed, first of all, "Legal Fees" and the first column on the left is, shows unreported. The second column shows reported. That is simply a comparison of the number of checks which were unreported with those which were reported.

Q And how many did you determine were unreported?

A Approximately eleven and a half checks, keeping in mind that one check was partially reported and partially not reported.

Q Okay. And is that eleven and a half indicated here on the bottom right-hand -- bottom left-hand side of the chart?

A Yes, sir.

Q How many checks did you determine were reported?

A About two and a half.

Q And is that shown here on the chart?

A Yes, sir.

Q All right. Now, what does the material here, the information on the right-hand side of the bottom of the chart, Government's Exhibit 42, show?

A That shows which of the checks were deposited and which were cashed. The third column from the left-hand side of the chart is headed "cash" and the last column is headed "Deposit."

Q Okay. Mr. Dyas, did Judge Claiborne report any of the checks that he cashed in 1979?

A No, sir, he did not.

Q Can you -- is that reflected by, generally speaking, by the column on the right-hand side of the chart, and in the absence of any similar column under the heading "Reported"?

A Yes, sir, it is.

Q Mr. Dyas, as a result of your calculations for the tax year 1977, were you able to arrive at a corrected total income figure?

A I think you misspoke yourself, Mr. Hendricks; you said 1977.

Q I am sorry. Let me rephrase the question. Were you able to arrive at a corrected total income figure for the tax year 1979?

A Yes, sir, I was.

Q What was that figure?

A That figure was $98,967.10.

Q And how much did Judge Claiborne report?

A Total income reported on Line 22 of his 1979 form 1040, which is Government Exhibit 3, was $80,227.04.

Q And what is the difference between the corrected total that you arrived at and the total that Judge Claiborne reported?

A The difference is $18,740.06, which is the amount shown as unreported on the large chart.

Q Now, Mr. Dyas, if the correct total income had been reported by Judge Claiborne, would that have an impact upon his tax liability?

MR. JOHNSTON: Objection, your Honor.

THE COURT: I will permit it, but of course, we are not concerned with the amount. I will permit the question to the extent that of the impact.

THE WITNESS: The answer to that is yes.

BY MR. HENDRICKS:

Q Would that amount have been substantial?

MR. JOHNSTON: Objection, your Honor.

THE COURT: Well --

MR. JOHNSTON: The existence or nonexistence of a substantial deficiency is irrelevant and inadmissible under a trial under this section of the Internal Revenue Service.

THE COURT: This prosecution under this section of the Internal Revenue Code, what is the relevancy of that?

MR. HENDRICKS: Your Honor, I think we are required to demonstrate materiality with respect to the statement which is allegedly false and a mere question as to whether the impact would have been substantial tends to support that materiality.

THE COURT: He has testified that as to the figure $18,740.06 difference --

MR. HENDRICKS: Your Honor, I will withdraw the question.

THE COURT: All right.

THE WITNESS: Mr. Hendricks, may I make one minor correction before we pass on to 1980.

THE COURT: Yes.

THE WITNESS: I think I inadvertently said that I had relied on the testimony of Anita Praytor with respect to the cashing of one of the checks received from Mr. Brown and indeed she did not testify with respect to that. So I would like to correct that.

MR. HENDRICKS: Okay.

THE COURT: You may correct it.

BY MR. HENDRICKS:

Q Now, with your permission, let's turn to tax year 1980.

What, Mr. Dyas, was the total income reported for tax year 1980?

A Would you indulge me to get a little organized here, please?

Q Sure.

A I am referring now to Government's Exhibit 5, which is the form 1040 individual tax return filed by Judge Claiborne for 1980, and the total income shown on Line 22, Page 1 of that income tax return is $54,251 even.

Q Now, Mr. Dyas, were you able to determine what the components of that $54,251 figure were?

A Yes, sir, I was.

Q What was that?

A Pardon me a moment, please.

Yes. Again by reference to Government Exhibit 5, which is the 1980 income tax return of Judge Claiborne, I determined the make-up of total income by reference to Line 8, which is wages, $54,500. On Line 9 is shown interest income, $2,751, and finally on Line 14, there is capital loss of $3,000. Adding those up, making allowance for the capital loss comes up to the total income of $54,251.

Q What if any legal fee income did Judge Claiborne report in 1980?

A There is no legal fee income reported on the 1980 return.

Q Where on the return should that figure have been reported?

A It should have been reported on a Schedule C, as it was on the 1979 return.

Q Was any Schedule C attached to the 1980 return?

A No, sir. There is not.

Q Now, have you, independent of the return and in conformity with the evidence which has been introduced in this trial, made the determination as to whether in fact there was unreported legal fee income for 1980?

A Yes, sir, I have.

Q Could you relate to the ladies and gentlemen of the jury and his Honor what that determination was based upon?

A That determination was first of all based on the testimony of Mr. Peter Echeverria and a check which he produced which is Government's Exhibit 14, again on the testimony of Mr. James J. Brown, two checks which he produced which are included in Government's 7, and finally, I relied on the testimony of Mr. Frank Rothman, who produced a letter to him written by Judge Claiborne and on the testimony of Mr. George DeRoy who produced a check which is Government's Exhibit 11, and also a memorandum written by Mr. DeRoy which is Government's Exhibit 12.

In addition to that, I made an analysis of what happened with those four checks which were received in 1980.

Q Okay. Now, let me ask you whether you have a copy of Government's Exhibit 43 in front of you?

A Yes, sir, I believe I do. I have it right here.

Q This is a photocopy, a small size photocopy of what is a Government chart?

A Yes. I have it here in front of me.

Q Before we show that to the ladies and gentlemen of the jury, let me ask you this about the chart: Did you make the chart?

A No, sir, I did not.

Q But you checked all the figures on the chart?

A Yes. I made an independent calculation of my own to verify the figures on this chart, not only the detail but the total.

Q Okay. What determination if any did you make as to the accuracy of the chart in all respects?

A I determined the chart to be accurate.

Q Would the chart be of assistance to you in explaining the findings for the tax year 1980 to the ladies and gentlemen of the jury?

A Yes, it would.

MR. HENDRICKS: We request permission at this time, your Honor, to use the 1980 chart and display it.

THE COURT: Do you wish to introduce it? I would also move the admission of Government's Exhibit 43 and 42 which is the chart for 1979.

MR. HENDRICKS: 42 has already been admitted.

MR. JOHNSTON: I may have slipped up on something at that point, your Honor. We would object to the admission in evidence of these large charts. We have no objection to the letter-size reproduction being admitted in evidence.

THE COURT: You previously admitted, because I, this question arose earlier and you did object at that time and I asked the Government to submit a memorandum which it did, and then the next day you said, well as long as I

I had said that the defense could use a blow-up of a particular exhibit that that was satisfactory.

MR. JOHNSTON: I think this is somewhat different, your Honor.

THE COURT: None whatsoever under Rule 1001 of the Federal Rules of Evidence.

All right, Government's Exhibit 43 will be admitted.

(Whereupon Government's Exhibit 43 was duly admitted into evidence.)

THE COURT: If you wish, Mr. Johnston, on cross-examination you could have the witness submit the smaller version as well. I have no objection to both of them going in, but the witness has testified they are identical except one is a blowup, am I correct on that?

THE WITNESS: Yes, that's correct, your Honor.

MR. JOHNSTON: Your Honor, I don't want to have two copies of the exhibit in evidence before the jury. But I submit --

THE COURT: I don't want two copies either, but we have two copies of other exhibits that went in.

MR. JOHNSTON: The photographic blowups of documentary exhibits which are actually introduced in evidence I submit is a different thing from introducing the chart itself as a primary exhibit in evidence.

MR. HENDRICKS: These aren't photographic blowups. These are graphic reductions. This is the exhibit right here.

THE COURT: You have made your point. Whether you call it a blowup or reproduction, I am not concerned about the technicalities of it. The rule very clearly states that it may be used.

BY MR. HENDRICKS:

Q Now, Mr. Dyas, through the use of this chart, could you explain the first item of unreported legal fees received by Judge Harry E. Claiborne?

A Yes. First of all, there are somewhat similar headings on this chart as the previous one, namely the date of the check, by whom the check was issued, the check number, the amount, whether any checks were reported or deposited, and whether unreported checks were either deposited or cashed.

Do you wish me to continue?

Q Yes, would you please?

A All right. The first item shown on the large chart was a check about which Mr. Peter Echeverria testified. This was a check issued by him on, which was dated December 31st, 1979, being check number 513 and the amount of that check was $42,452.34. That check was not reported on the 1980 income tax return on a Schedule C.

Mr. Echeverria testified that this check was delivered to Judge Claiborne on about, I believe, January 4th or 5th of 1980.

Q Did that testimony have something to do with your use of the $42,000 check as 1980 income?

A Yes, sir, it did.

Q And as an additional check, did you conduct a review of the 1979 return to determine whether it had been reported that year?

A Yes, sir. I checked not only the 1979 return, but also Government's Exhibit 28 and 31 which were the documents produced by Mr. Wright to find out whether that had in any way been included in 1979 legal fees and I determined that it had not been included in 1979.

Q So you included it as 1980 income?

A Yes, sir, because that was the year in which the income was received.

Q Okay. Now, Mr. Dyas, what happened to that check?

A All right. That check was deposited on January 4th, 1980, at the Pioneer Citizens Bank account of Judge Claiborne. That's shown by Government Exhibit 21, which are the bank records relating to the deposit of that item.

Q I believe you said it was not reported?

A Yes, sir, that's correct. It was not reported.

THE COURT: Did you say January 4th, 1980?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. HENDRICKS:

Q What is the next item of legal fee income that you were able to locate for the year 1980?

A All right. This was a check issued by James J. Brown on August 6th of 1980. It was the check drawn on his professional corporation bank account, check number 1144 in the amount of $888.30. That check is included in Government Exhibit 7.

Q Were you able to determine what happened to that check?

A Yes, sir. That check was deposited in Judge Claiborne's account at First National Bank of Nevada, now First Interstate Bank on August 13th, 1980. That is shown by bank records which are in Government Exhibit 30.

Q Okay. And was that check that was deposited reported or unreported?

A It was unreported.

Q And that's shown here on the chart?

A Yes, sir. It's the second column from the right, the yellow block indicating it was not reported.

Q All right. Were you able to locate other items of legal fee income for the year 1980?

A Yes. The next item on the chart is a check dated

August 15th, 1980. It was a check issued by the law firm of Hochman, Salkin and DeRoy. It was their check number 1662, in the amount of $37,500.

Q And what happened to that check?

A That check -- let me refer to the exhibit itself.

I am now looking at Government Exhibit 11, which is the check issued by the law form of Hochman, Salkin and DeRoy, and looking at the endorsement on the back, there is a handwritten endorsement which appears to be Harry E. Claiborne, and it bears a stamp endorsement of GNLV Corporation, doing business as Golden Nugget Hotel and Casino. This check was cashed at the Golden Nugget.

Q Is that reflected on the chart?

A Yes, sir, it is.

Q And were you able to identify an additional item of income for 1980 from legal fees?

A Yes, sir. The fourth and last item on the large chart is a check which was issued by Mr. Brown, the check was dated November 7th, 1980. It's check number 1156, the amount of the check is $7,071.19. That check also is included in Government Exhibit 7.

Q And what happened to that check, sir?

A Likewise, that check was deposited in the First National Bank account of Judge Claiborne and that's shown by Government Exhibit 36, which are the bank records.

Q And was it reported on the 1980 tax return?

A No, sir, it was not.

Q All right. Now, sir, as a result of your determinations for legal fee income received by Judge Claiborne in 1980, were you able to reach a total there of figures?

A Yes, sir. In the lower portion of the large chart, the total fees received were $87,911.83.

Q And what is represented by the second block in the lower portion of the chart for 1980 under the heading "Total Fees"?

A That's the amount of total fees reported on the 1980 income tax return, which is Government Exhibit 5. No legal fees were reported on that return.

Q And how did you arrive at the last block under the heading "Total Fees"?

A Well, simply a subtraction of nothing from $87,911.83 to arrive at one reported legal fees of the same amount.

Q Now, as a result of your calculations, were you able to arrive at a corrected total income for Judge Claiborne for the year 1980?

A Yes, sir, I was.

Q And could you tell the ladies and gentlemen of the jury what you did to arrive at that figure?

A I simply added the unreported legal fees of $87,911.83 to the $54,251 even, which was reported on the return to arrive at a corrected total income of $142,162.83.

Q And what was the difference between what had been reported and what you determined should have been reported as corrected total income?

A The difference again are the legal fees of $87,911.83.

Q What was the percentage of total corrected income which Judge Claiborne did not report?

MR. JOHNSTON: Objected to as irrelevant.

THE COURT: I will permit it.

THE WITNESS: Approximately 62 percent.

BY MR. HENDRICKS:

Q If Judge Claiborne had reported the correct total income figure, would there have been an impact upon his tax liability?

A Yes, sir.

Q Now, sir, do you know whether Judge Claiborne got a refund for the tax year 1980?

A Yes, sir, he did.

Q Can you tell us what that is by reference to Government's Exhibits introduced in this case?

A Yes, sir. There is in evidence a United States Treasury check dated July 24th, 1981, payable to Harry E. Claiborne at an address in Las Vegas. The amount of the check is $44,256. Immediately below the amount is shown tax refund, and the year to which it applies is shown under date on the check as 12/80, indicating a taxable year, 1980.

Q Okay. And can you tell from looking at that exhibit and from other evidence introduced in this case, what was done -- what the disposition of that check was?

A Yes, sir. By reference to the reverse side of the check, Government Exhibit 38, there appears on there a handwritten endorsement, which appears to be Harry Claiborne and immediately beneath that is a stamp endorsement, GNLV Corporation, doing business as Golden Nugget Hotel and Casino. From that I concluded that the check was cashed at the Golden Nugget.

Q If Judge Claiborne had reported his correct total income, would he have been entitled to this $44,256 refund check?

A No, sir.

Q How much would he properly have been entitled to?

A About $2,000.

MR. HENDRICKS: I have no further questions at this time.

THE COURT: Let's take a midmorning break at this time, if you will, members of the jury.

(Whereupon the jury was excused.)

THE COURT: Before we recess, I want to ask the witness a question for my own information.

How in the world could a person look at the 1980 return filed by the defendant and ever issue a refund check for $44,000?

THE WITNESS: Well, sir, I am not an expert in the operations of the services.

THE COURT: You don't know how it's handled?

THE WITNESS: I don't know how it's handled, your Honor.

THE COURT: Well, I get refunds too, but I arrange with the administrative office to take out so much extra that I don't have to worry about it, and I don't have my accounting work done by Mr. Watson. I have it done by Prush Waterhouse. I was just wondering why in the world any employee of the IRS would ever, taking a look at that return, would authorize a refund? Do they automatically issue refunds for whatever is claimed?

THE WITNESS: Well, your Honor, I know of my own knowledge that certain procedures are followed, but the people who process tax returns are not tax experts.

THE COURT: I understand that. They are on the lower level and have just a fundamental in accounting principles.

THE WITNESS: They may have no knowledge whatsoever of accounting principles whatsoever, your Honor. The mathematics are checked to a certain extent on the returns.

THE COURT: Just run through the adding machine or the computer and come up from there.

THE WITNESS: Yes, sir.

THE COURT: I just wondered for my own information why it is. I mean next time maybe I will claim a refund of a million dollars and become a millionaire, perhaps.

We will take a recess at this time.

(Whereupon a recess was had.)

MR. HENDRICKS: Your Honor, may I request permission to reopen direct very briefly?

THE COURT: Yes. All right, let's call the jury.

Wait a minute, before you call the jury, I don't know what this next exhibit is. Are there any exhibits?

MR. HENDRICKS: Yes, your Honor. One.

MR. JOHNSTON: If the Court please, a new exhibit?

MR. HENDRICKS: A new exhibit, yes.

MR. JOHNSTON: My question is if it's the exhibit of which we have previously been given a photographic reproduction, we have objections to it. It should be argued outside the presence of the jury.

THE COURT: I was going to say I don't know whether, I don't know what's coming. May I look at it.

MR. JOHNSTON: We will have objections. We would like to argue to the introduction in evidence of this exhibit, your Honor.

THE COURT: Let's see the exhibit.

MR. HENDRICKS: Excuse me, counsel, since it's our exhibit, Chronology of Events, 1979 Legal Fee.

Your Honor, this is a chart which has been marked Government's Exhibit 46 and it's captioned, "Chronology of Events 1979 Legal Fees."

THE COURT: Well, of course, I don't know what the witness is going to testify to.

MR. HENDRICKS: Well, in essence --

THE COURT: He may be asked questions, certainly. He may be asked questions about the chronology of events.

MR. HENDRICKS: In essence, your Honor, he would testify that he has been over the chronology, that they describe the chronological events which relate to and are consistent with his analysis of the 1979 tax calculations which he made, and are fair and accurate to the best of his knowledge.

MR. JOHNSTON: As I previously stated, we have previously been provided with a copy of this exhibit, and we would object to its admission in evidence on three grounds. There are three statements in the exhibit that are incorrect, inconsistent.

THE COURT: Which statements are incorrect?

MR. JOHNSTON: The first one is the first box at the top that has $45,371.93. The number that the defendant gave to Mr. Wright was 46,371.93. That's been amply demonstrated in the trial so far.

The other two objections we have --

THE COURT: I thought in that letter somebody had originally written 45,371.93 and written over that or something with the 46,000.

MR. JOHNSTON: The testimony was that it was Judge Claiborne who overwrote over it before it was given to Mr. Wright.

THE COURT: Yes, but --

MR. JOHNSTON: Judge Claiborne gave -- Mr. Claiborne gave Mr. Wright 46,000.

THE COURT: That's a very minor difference.

MR. HENDRICKS: Actually the figures do add up to 45,371.93.

MR. JOHNSTON: That's correct, but that's not the number that Judge Claiborne gave to Mr. Wright.

THE COURT: I will let the witness explain that. What other errors?

MR. JOHNSTON: Two other objections, your Honor.

Opposite Exhibit 40 about the middle of this document, it says defendant prepares and files financial statement with Judicial Ethics Committee, swears 1979 legal fees of $25,050.76. I submit there is a difference between swearing, making -- signing an oath, a jurat, if the Court please. The word "swears" is a much stronger word than making a declaration under penalty of perjury.

THE COURT: You object to the use of the word "swears"?

MR. JOHNSTON: I do indeed.

THE COURT: Okay.

MR. JOHNSTON: The last item is the same thing.

THE COURT: We can just delete by taping over the word "swears" in the No. 40 and No. 3, the final item on this chart. The impact is still there. That is, it's true that they were under oath and I take it whoever prepared the chart elected to use the word "swears." I don't think it makes a bit of difference what the word is. The two words on these chronology of events could be just deleted entirely.

MR. GOODMAN: Your Honor, may I make an additional observation and objection, please?

THE COURT: All right.

MR. GOODMAN: It's our position, your Honor that this chart is different from the other two charts which were submitted to the jury as evidence. This chart basically is really a demonstrative piece of evidence. It's a piece of evidence which is in the nature of an argumentative document, something that would be covered on a closing argument rather than editorializing certain facts in the case. I would submit that it should not -- it may be used perhaps in argument, but it shouldn't go to the jury as an exhibit. I think it's differentiated from the other charts which refer to specific documents of the case and is a summary in fact of the evidence submitted. This is an interpretation really of various events which took place, and I think it should not go to the jury.

MR. HENDRICKS: Our position is, your Honor, the chart doesn't have any argumentative language in it. Each one of the statements is a fair and objective characterization which is tied to an exhibit and a date and that given the nature of the case, the complexity of at least the financial transactions, that the jury for purposes of understanding those transactions is entitled to this kind of objective summarization of the evidence, all of which is gone in, all cf which evidence is directly tied to the statements on the chart.

MR. GOODMAN: It serves to emphasize and re-emphasize specific testimony during the course of the trial.

THE COURT: I will permit you of course to reopen the direct testimony of the expert for the purpose of further testimony in order so that he could give a chronology of events. That's entirely satisfactory.

But I question whether this is a proper summarization under the Federal Rules of Evidence.

Is this coming under Rule 1006, Mr. Hendricks?

MR. HENDRICKS: Yes, your Honor.

THE COURT: The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals or duplicates shall be made available for examination or copying or both by other parties at reasonable time and place. The Court may order that they be produced in court.

That's not intended to cover just a mere chronology of events, is it? Are they so numerous and voluminous that you need it for this purpose?

MR. HENDRICKS: There have been numerous, I would say that there are numerous events.

THE COURT: You have got eight of them listed here on this chronology of events.

MR. HENDRICKS: It's our view, your Honor, there are many dates which have been referred to in this case and each one of them is going to be argued by counsel and of course, we are interested in bringing out the dates that we think are of importance, but given this witness's testimony that these are fair descriptions of dates relevant to the tax calculations, we think that that process of selecting out the relevant ones is one that the jury can properly take into consideration.

MR. GOODMAN: Your Honor, I think it may be properly used for demonstrative purposes in argument, but to submit it to the jury room actually it's a road map of prosecution's theory of the case. I would submit that's not the purpose of an exhibit.

THE COURT: I don't know that -- you say that exhibit could be properly used in argument?

MR. GOODMAN: It may be able to be used in argument if in fact he wants to put it up and say the evidence according to the Government shows the following, but for them to take it back, I submit that that can't go into the jury room with them as the other exhibits.

THE COURT: I question whether it can be, even be properly used in argument. You are referring to a particular document before the jury that's not in evidence. I don't know about that.

MR. HENDRICKS: Your Honor, each one of the statements made here on this chart is linked to a particular exhibit and the description is nothing more than a fair description of what the exhibit is.

MR. GOODMAN: But it's argumentative, your Honor, and that's our position.

THE COURT: Suppose you take this small chart and you may use it and the witness may have the small chart, I don't know. But you can use mine. That was contained in the list of exhibits. Just go through the testimony with the witness as to the chronology of events exactly as you have it here, and you can point out the difference between 45,000 and 46,000; question the witness about that and so on. Instead of using the word "swear", the defendant prepare and file written statements to the Judicial Ethics Committee under oath showing legal fees of 23,050.76, which he did according to the return.

I am not worried about the word "swearing" so much. There may be a technical distinction between executing a document under oath and swearing as such. And the same way with the others.

MR. HENDRICKS: Your Honor, we would certainly like to be in a position if not to introduce this into evidence, to use this chart for purposes of argument.

THE COURT: If you can show me law to the effect that you can prepare a chart that is not introduced in evidence, Mr. Goodman is inclined to say yes, it could be, but I -- then somebody else will object, Mr. Johnston or Mr. Raggio.

MR. RAGGIO: Yes.

MR. JOHNSTON: Yes, we both object, your Honor. We will prepare something for the Court on that.

THE COURT: All right. That's fine. If you wish to go further into it at this time, if the testimony of the witness is in line with this, and without mentioning the chart, why then if you have any authority to show that you have got a right to prepare an exhibit based upon that, why I would be glad to admit it. I don't like a chart introduced by either side which tends to argue the contentions of the parties as such. That is my main theory about it. I may be wrong.

MR. HENDRICKS: I don't mean to argue with the Court, but I would simply bring to the Court's attention that what we have meticulously tried to do is stay away from argument and these things are simply recitations of what's on the face of the document, what's contained.

THE COURT: You have a perfect right to go into this with the witness and ask him about the chronology of events from 1979. I suppose you have got one from 1980, haven't you?

MR. HENDRICKS: No, sir, we do not.

THE COURT: All right. I will permit you to reopen the testimony, but let's put the exhibit out of sight for the moment. Call the jury, Mr. Marshal.

THE COURT: Members of the jury, I have granted permission to the Government as to ask further questions of this witness on direct examination. Perhaps it was my error for calling a midmorning recess at that time. That's what happens. Lawyers think up additional questions.

All right, Mr. Hendricks.

MR. HENDRICKS: Thank you, your Honor.

BY MR. HENDRICKS:

Q Mr. Dyas, let me address your attention again to the chart for 1979. I notice here that version referring to the $41,000 figure?

A Yes.

Q What is this, is the $41,000 figure a total of all of the checks shown on the chart?

A Yes, sir, it is.

Q Okay. Now, if one were to total all of these checks on the left-hand side of the chart, you would come up with $41,000?

A Right.

Q Now, with respect to the figure $22,332.87?

A Yes.

Q Now, is that the exact total of the three items shown on the chart, $1,000; 7,000 and a portion of 17,500?

A No, sir, it is not.

Q Why is it different?

A Because there is a fourth item which was included in the reported fees on the 1979 return which is Exhibit 3. I determined that fourth item based on the testimony of Mr. Wright and specifically on Government Exhibit 28, which he produced.

Exhibit 28 has a listing of deposits which was supplied by Judge Claiborne to Mr. Wright, and included in that list of deposits was an item of $4,332.87, and that item is detailed in Government Exhibit 18, which are bank records, I believe, from the Pioneer Bank. That deposit, I do not have Exhibit 18 in front of me, but that deposit consisted of three items. There was a $60 check, there was a $3,000.87 check and I believe the third check was an even amount of $1,200 and those items total the 4,332.87; so that was the fourth item which was included in reported legal fees. I arrived at this as a result of the analysis of the documents that I had referred to.

Q Now, what treatment did you make of this $4,000 item?

A I did not consider that as legal fee income.

Q Okay. So you just backed that out of the figure?

A Yes, sir, I did.

Q And that accounts for the difference between the total number of items here in blue and the $22,332 figure?

A Yes, sir.

Q Now, as to the $18,000 figure, is there any difference between the $18,000 figure unreported and the total of unreported items carried on the right-hand side of the chart for 1979?

A No, sir, there is not.

Q Exactly the same?

A Yes.

MR. HENDRICKS: Thank you, sir. That's all I have.

MR. JOHNSTON: Would you leave it up, please, Mr. Hendricks?

Could we have it back? Could I have some help, please?

Thank you.

CROSS-EXAMINATION

BY MR. JOHNSTON:

Q Mr. Dyas, it's my understanding from your testimony that you did not prepare this chart; is that right?

A No, sir, I did not.

Q Do you know who prepared it?

A Well, as it happens, Mr. Johnston, there is a label on the back which shows the name of the company that did prepare it. It's a Corn Graphics, Limited, or some such name as that in, I believe, New York City.

Q I am not so much interested in the name of the firm that actually prepared the physical chart as I am in the name of the person who did the -- who supplied the information?

MR. HENDRICKS: Object, your Honor. It's irrelevant. He testified he checked all the items, all the items are accurate and he adopted it as his own chart.

MR. JOHNSTON: I think we are entitled to know who prepared the chart, your Honor.

THE COURT: I sustain the objection.

BY MR. JOHNSTON:

Q When was the chart originally prepared, Mr. Dyas?

A That I do not know.

Q You have no information about that at all?

A No, sir.

Q And you had no part in the preparation of this material or the ultimate preparation of the chart, did you?

MR. HENDRICKS: Objection, relevance.

THE COURT: Well, he testified previously that he didn't, but I will permit it.

BY MR. JOHNSTON:

Q Were you aware, before the morning recess that we just finished that the items that are indicated in blue under the column reported deposited, didn't total up to the amount that was shown at the bottom of the chart, the $22,000 figure.

A Of course I was. I made an analysis of that quite a long time ago.

Q I understood your testimony to be that the items that were deposited or reported consisted of $10,000, this 17,500 amount, this $7,000 item, and the thousand dollar item down here; is that right?

A Yes.

Q But they don't add up to the $22,000 figure, do they?

A No, because there is that fourth item in there about which Mr. Wright testified in which Government Exhibit 28 shows.

Q Is the items that Mr. Wright used and the ones that he totaled up, where they totaled $22,332, they included another item that's not shown on here at all, didn't they?

A It's not shown on that particular chart, no, sir. It is shown in there because it's included in the $22,332 figure.

Q Right. It's included in its filing, but it's not shown anywhere on the chart as a separate item?

A Not as a separate item, no, sir.

Q Well, if this chart is going to be accurate and really explain what happened, wouldn't you have to have something on the chart about the $4[illegible]2 deposit which Mr. Wright incorrectly treated as a fee income?

A No, I don't think that's true, Mr. Johnston, because this is a comparison of total legal fee income received with total legal fee income reported.

The individual items shown in green, with the green background, totalling $41,072.93 are the corrected legal fees. That is simply compared on the lower portion of the chart with the total legal fees received which are on the 1979 return.

This did not purport to attempt an analysis as such of all of the items reported on the return.

Q Well, the total of $41,072.93 is a total of these nine items, isn't it?

A Fourteen items, yes, sir.

Q That's correct. And that's rather clear because it appears directly under those items and it's background is in the same green color; isn't it?

A Yes, sir.

Q But the $22,332.87 total is not a total of the items in the blue column, reported deposited, is it?

A That's correct.

Q And there is nothing on the chart to explain that, to explain that difference, is there?

A As I have stated previously --

Q There is nothing on the chart, is there?

A No, there is not.

Q If you were going to do the charts yourself, Mr. Dyas, wouldn't you want to include some explanation of the $4332 item to explain the difference between this reported total and the ones that are indicated as reported and deposited in the blue column?

A Not necessarily. I think that this depicts the most simple, straight-forward illustration of what happened.

Q All right. Now, Mr. Dyas, at the bottom part of this chart, I am not sure whether the jurors can all see it, there is an additional analysis or comparison of some kind. Would you explain to us again what that is?

A Yes, sir. Beginning with the left column, which is in yellow on the large chart, "Unreported." That simply depicts the eleven and a half items, if you consider the $17,500 item as being roughly split in half, that reflects the total items, that eleven and a half of those were unreported.

In the second column unreported is -- it depicts in blue roughly two and a half of the items listed above with the green background were reported. In other words, 10,000 of the 17,500, the $7,000 item and a $1,000 item from Miss Quintana.

Q That portion, like the upper part makes no reference to the item that was reported as a fee which really was not a fee, does it?

A It does not make a specific reference to it, no. It only deals with the items that are listed on the chart.

Q All right, sir. And the part over here on the right-hand side?

A That simply shows which of the items were cashed and which were deposited. There were 14 checks in total, 8 of those were cashed, 6 were deposited.

Q What is the purpose of including this information on the chart?

A It's just a summarization of what happened. It's really an analysis of the number of items involved rather than the specific dollars involved, which are explained on the upper roughly two-thirds of the chart.

Q Well, is there not an intent that the jury should draw an inference from that that items which were cashed in order to avoid reporting them? Isn't that the purpose of that?

A Well, as far as I am concerned, it's a fair inference, Mr. Johnston.

Q All right, sir. Could we have the other easel, please. Let's sit it alongside this one.

You have your own smaller reproduction of these, I take it, Mr. Dyas? Do you have those available, the two charts?

A Let me check to be sure, Mr. Johnston.

Yes, sir, I do.

Q I notice that the 1980 chart doesn't contain anything at the bottom that's comparable to this portion of the 1979 chart. Can you tell us why that is?

A Yes, I think I can. Because, first of all, there are only four items involved as compared with 14 in 1979.

Q Yes?

A And secondly, one of two things happened on the disposition of the four items in 1980. They were either totally deposited or one check was completely negotiated for cash. That is, they were not split as was the $17,500 item, as between reporting and not reporting.

Q Are you telling me now that the reason for having this part on the bottom of the 1979 chart is because this one item was not completely deposited?

A It's simply a depiction of the numbers which are involved, and the good reason for that is that there was a split of that one check as indicated by the yellow column and the blue column next to it on the left-hand side of Government Exhibit 42.

Q And that's your explanation as to why this material is included down here?

A It's simply a depiction of what happened to the checks.

Q Yes.

A A breakdown simply by number of checks, rather than amounts which is done up above as I stated previously.

Q Part of what this does is to show the number of items that were cashed and the smaller number that were deposited, doesn't it?

A Yes, sir, and the same information is depicted on the 1980 chart in the slightly different fashion because he's somewhat simpler.

Q Had you had a similar depiction on the bottom of the 1980 chart, you would have shown that there were three items that were deposited and only one that was cashed, wouldn't you?

A Well, I don't think it's really necessary, since it's shown up on the top.

Q All right, sir. Can you tell us what the total was in 1980 of the items that were deposited as against the one item that was cashed?

A Yes, sir. If I may refer to one of my own schedules here?

THE COURT: Surely.

He asked the total items deposited, total of the items deposited as against the one item that was cashed, that is the $87,911.83 less $37,500?

THE WITNESS: Yes, sir, that's correct, your Honor, which according to my mental calculation would be $50,411.83, which would have been deposited. The balance of $37,500 was the one check cashed.

BY MR. JOHNSTON:

Q All right. So then it's a fair statement, is it not, that as to the four items which you have testified were not reported, three of them were deposited and the three totaled over $50,000? The one item that was not deposited but was cashed was for $37,500?

A Yes, sir, that's correct.

Q I want to show you Government's Exhibit 5, which is the 1980 income tax return of Judge Claiborne.

A All right.

Q Does that return show that a refund is going to Judge Claiborne?

A Yes, sir, it does.

Q In what amount?

A Well, you are going to have to direct my attention a little bit more specifically.

Q All right, sir. I will address your attention to Line 64. It says amount of Line 63 to be refunded to you.

A All right. There are two different figures that appear there.

Q On Line 64?

A Well, by reference to what apparently was put on the return by a preparer and then there was a correction made by the service center in processing the return.

Q Would you tell us, please, what figure was put on the return by the preparer?

A $20,927 even.

Q Now, I will hand you Government's Exhibit 38, which is the refund check that was issued to Judge Claiborne and ask you what is the amount of that check?

A The amount of that check is $44,256.

Q Can you explain why the check is so much larger than the amount shown as the refund on the return?

A Yes, sir, I can.

Q Will you do that, please?

A I may have to ask you for some additional exhibits to work from.

Q All right, sir. If you have the numbers handy, it will be very easy to do.

A I believe that I do not have Government Exhibit 30 or Government Exhibit 4 here, Mr. Johnston.

Q All right. Here is 30 and here is 4. I will hand you Government's Exhibit 30 and 4, Mr. Dyas.

A Yes, all right. I have made an analysis of what happened with respect to the 1980 refund.

Q May I ask you to hold it just a moment.

All right, Mr. Dyas, if you would proceed.

A All right. I will first refer to Government's Exhibit 30, which consists of several documents, one of which is what's called a form 1040ES, which has to do with payment of estimated tax by a taxpayer, and this form 1040ES, which is for the calendar year 1980 and signed, I believe Harry Claiborne, shows that an amount of payment of estimated tax of $2,500 is to be paid, and that on the same sheet, in Exhibit 30, is a copy of an unnegotiated check dated April 11th, 1980, drawn on the account of Harry E. Claiborne, at Pioneer Citizens Bank, check number 0303 for $2,500.

Q May I ask you to pause for a moment, so that I can look at that picture of the check, Mr. Dyas?

All right, sir, thank you.

A All right. That's the first item that I took into account, Mr. Johnston, in considering the analysis of this 1980 refund.

Q Yes.

A Then by reference to Government's Exhibit 3, there was an overpayment of 1979 income tax which, on that 1979 return, Judge Claiborne asked be applied to his 1980 estimated tax.

Q Yes.

A The third item that I took into account was a payment made with application for extension to file a 1980 income tax return by which there has been previous testimony, and that payment was indicated to have been $20,817.59.

The fourth item that I took into account for 1980 was the income tax withheld from the 1980 salary of Judge Claiborne which would be shown on the form W-2 attached to the 1980 return which is Government's Exhibit 5, and that was rounded off on the return itself to $17,848, which is permissible.

Q All right. Now, you have listed four items to which Judge Claiborne was entitled to credit against his 1980 income tax liability; is that right?

A Yes, sir.

Q And one of those was the amount that had been withheld from his salary for 1980, in 1980? $17,848? Another one was the amount carried over from his 1979 return of $4,182; is that right?

A Yes.

Q And then there were two other items, the $20,000 check that he had sent in with his application for an extension of time to file the return, right?

A Yes.

Q And additionally a $2500 payment that he had made when he filed his declaration of estimated tax for 1980, right?

A That's correct.

Q How many of those four items was he actually credited with on the 1980 return when he filed it?

A Let me look at the return itself.

Q Please do. Exhibit 5.

A A credit was claimed on the 1980 return which is Government's Exhibit 5 in the amount of $17,848, and estimated tax payment amount applied from 1979 return of $4,182.

Q So the return as it was filed failed to give him credit for the other two items, didn't it?

A Yes, that's correct.

Q That's the $20,000 plus and $2500?

A That's correct.

Q And that was a mistake in the preparation of the return, was it not?

A Well, the credits were not claimed, but --

Q Should they have been claimed?

A They should have been claimed, yes.

Q It was a mistake not to claim them, was it not?

A Yes, it was.

Q Is it your conclusion then that somebody in the Internal Revenue Service picked those up and they were taken into account when the refund check was issued?

A I think without a doubt, that's what happened.

Q But as far as the return itself is concerned, Judge Claiborne had no reason to expect a refund of more than $20,927, did he?

A Well, as far as the way the return was filed, no.

Q That's my question.

Now, Mr. Dyas, I want to go back with you for a moment. You have had a long career with the Internal Revenue Service. You were first an Internal Revenue agent; is that right?

A Yes, sir, that's correct.

Q When was that?

A Well, that was from November 1950 until, actually as a field agent until April of 1954, at which time I was detailed to the appellate division for six months and that turned into then a permanent assignment which ended when I became a technical adviser in August of 1955.

Q Being moved from the field examination division up to the appellate division was a promotion, wasn't it?

A As a matter of fact, it was not. It was at exactly the same pay.

Q But wasn't it considered as a promotion in terms of the duties that you had and the responsibilities that you carried?

A I think it was simply a different job.

Q You didn't feel that this was -- that you had been honored in a sense by being moved from the field audit up to the appellate division?

A No, sir, I was simply looking ahead to a job beyond being an accountant and auditor.

Q Are people ever moved from the appellate division back to the audit division?

A I have no access to personnel records; I wouldn't know.

Q When you were in the appellate division if you had been moved back to the examination division, would you have considered that a demotion?

A Not necessarily. It was never proposed, so it's pure speculation.

Q All right. And then after you served for a time in the appellate division, you became a technical adviser and that was in 1955?

A Yes, sir.

Q In Omaha?

A Yes.

Q And you have been a technical adviser then for going on thirty years, haven't you?

A Well, it will be 29 years on August 14th.

Q Are you one of the very senior technical advisers in the United States, Mr. Dyas?

A I would suspect that I am the senior technical adviser, but I don't know because I am not acquainted with all the people in this country.

Q But you don't know of any other technical adviser who has been a technical adviser as long as you have, do you?

A No, I do not.

Q Will you tell us what again your duties and responsibilities are as a technical adviser?

A Well, if I may give you a little bit of background, Mr. Johnston?

Q Surely.

A Cases in which criminal prosecution has been recommended by the Office of the District Director are referred to District Counsel's Office for the first legal review, which is performed on a particular case.

Q That's the District Counsel's Office of the Internal Revenue Service, isn't it?

A Yes.

Q And the District Counsel's Office is staffed by lawyers generally, is it not?

A **Yes, sir.** Among the technical employees in San Francisco, I believe that except for a parallel, I am the only person who is not a lawyer.

Q So that during your entire period of service as a technical adviser, you have been working with lawyers, haven't you?

A Yes, sir, I have.

Q And you have been working reviewing exclusively cases in which what is now called the Criminal Investigation Division, has recommended criminal prosecution; is that a fair statement?

A Not exclusively. Occasionally I will do work on tax court cases; one of the first things I did when I transferred to San Francisco had to do with a refund case.

Q I see. But the great bulk of your work has to do with cases in which the agent or the Criminal Investigation Division has recommended prosecution?

A Probably 98 or 99 percent of my work, I would say.

Q And in connection with that work then you must work very closely with the attorneys who are reviewing those cases, is that fair?

A Yes, sir, I think it's my job to provide accounting and technical assistance to the lawyers as they are reviewing these recommendations for prosecution.

Q And doesn't it happen at times that you may find yourself working with a lawyer who is rather young and relatively inexperienced and your help and advise to him perhaps assumes more importance than if you were working with an older, more experienced attorney?

MR. HENDRICKS: Objection, relevance.

MR. JOHNSTON: I just want to develop his expertise.

THE COURT: Objection sustained.

Of course he has to work with lawyers no matter what their ages are.

BY MR. JOHNSTON:

Q In the course of performing your work as a technical adviser, Mr. Dyas, do you frequently participate in conferences, do you not, that are held in the District Counsel's Office?

MR. HENDRICKS: Objection, relevance.

THE COURT: Well, I will permit him to answer the question whether he does or does not.

MR. JOHNSTON: I think it will become clear later whether it's relevant, your Honor.

THE WITNESS: Yes, I do.

BY MR. JOHNSTON:

Q And isn't it the practice in that office whenever a taxpayer or the attorney for a taxpayer who has been nominated for criminal prosecution requests it, he can have a conference in the District Counsel's Office.

MR. HENDRICKS: Objection, your Honor, and I request to be heard outside the presence of the jury on this.

THE COURT: This is irrelevant. The jury hasn't got a thing to do with that phase of it.

BY MR. JOHNSTON:

Q You do participate, do you not, Mr. Dyas, in decisions that are made as to whether cases should go forward to the Department of Justice with a recommendation?

MR. HENDRICKS: Objection, relevance.

THE COURT: Sustained. I have previously ruled on this specific matter, gentlemen. This doesn't have anything to do with this case, the expert or the expertise of the witness.

MR. JOHNSTON: If the Court please, I wish to put a hypothetical question to the witness and this is part of the foundation to the question.

THE COURT: You may examine the witness in the absence of the jury. It hasn't got a thing to do with this case.

MR. JOHNSTON: My question will have to do with the case, your Honor.

THE COURT: Beg your pardon?

MR. JOHNSTON: This man is qualified as an expert. I wish to put a hypothetical question to him.

THE COURT: If it's a relevant question, yes, but it's not a relevant question.

MR. JOHNSTON: I wouldn't seek to ask the question if I didn't think it was relevant, your Honor.

THE COURT: I just disagree with you.

MR. JOHNSTON: Your Honor hasn't heard the question yet.

THE COURT: I have heard the question. I sustained the objection.

MR. JOHNSTON: I am talking about a hypothetical question.

THE COURT: Let the jury step out, if you will.

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. Ask the question.

MR. JOHNSTON: My question is this: If you were reviewing a report from a Criminal Investigation Division in which that division had recommended prosecution of a taxpayer and the Government's case was constructed wholly or partially on the basis of bank deposits and there was a bank deposit that had been made in currency in the amount of $75,000 and the special agent proposed to treat that as income while the taxpayer was contending that it was a loan and was not income and the only evidence that the taxpayer had to present that it was a loan was a notation indicating that it was a loan made on a work sheet by the accountant who prepared the taxpayer's return, and there was no other evidence, documentary or testimonial to establish the existence of the loan, no evidence of a promissory note, no evidence of repayment, no identification of a lender, no indication of interest being paid or claimed as a deduction, would you then conclude that that was a loan and not income?

THE COURT: I will permit him to answer the question because the jury is out. But he is not going to answer it before the jury.

THE WITNESS: Mr. Johnston, that question is so convoluted, I couldn't keep track of it.

MR. JOHNSTON: I would be happy to restate it. The question is, in your opinion if the taxpayer comes in and claims that a bank deposit was a loan but he has no evidence of any kind that there was a loan except a notation on a work sheet made by his return preparer, who now testifies that he has no present recollection of receiving the information and that's all the indication there is that it's a loan. I won't go through the other items again, the absence of a note or evidence of repayment and so on; in your opinion, would that be sufficient evidence upon which to conclude that the deposit represented a loan rather than income?

THE WITNESS: Well, I think I would probably need to know more facts, Mr. Johnston.

BY MR. JOHNSTON:

Q I am asking you to assume that these are all the facts that there is a bank deposit, that the agent who worked the case on a bank deposit basis and that the taxpayer claims the deposit was a loan and not income and this is the only evidence he has to present to support his claim that it's a loan. In your opinion, would that be sufficient to reach a conclusion that it was a loan rather than income?

A As I say, I think it might require more facts, Mr. Johnston.

Q You are not prepared to answer that kind of question?

A Well, I don't think there are enough facts on which to base an opinion.

Q Mr. Dyas, isn't it perfectly clear to you that if you sat in judgment on that kind of case, and that's the only evidence that the taxpayer had to present to support his claim that the deposit represented a loan, that you wouldn't accept that as any kind of convincing evidence that there was indeed a loan? Can't you agree with me on that?

A Not necessarily, Mr. Johnston.

THE COURT: Mr. Johnston, let's cut it off.

MR. JOHNSTON: Thank you, your Honor.

THE COURT: Are you trying to qualify this gentleman as an expert on an interpretation of the financial disclosure law under the Ethics in Government Act?

MR. JOHNSTON: No, your Honor.

THE COURT: Well, what do we have thus far with respect to -- I know we got the $75,000 loan under Count VII, the alleged loan.

MR. JOHNSTON: That's the one.

THE COURT: Is that what you are talking about?

MR. JOHNSTON: I am trying to qualify him as an expert on the same basis that the Government qualified him.

THE COURT: I am not sorry you are not going to do it because the financial disclosure prosecution is not connected with an IRS prosecution.

MR. JOHNSTON: May I ask him another question on that?

THE COURT: All right.

BY MR. JOHNSTON:

Q In the course of your work in the Internal Revenue Service, isn't it a fact that occasionally you have cases referred to the District Counsel's Office that involve proposed charges of filing a false statement under Section 1001 of Title 28?

A Yes. Occasionally.

Q You have had some of those, have you not?

A I have worked on some, yes.

Q And in your opinion, is the kind of evidence that is needed to go forward any different in a case of that kind from what it is in a case that is brought under the Internal Revenue Code?

A Well, Mr. Johnston, I am not a lawyer, but I think the elements of the offense are somewhat different.

Q Would you think that the determination of whether a bank deposit constituted income or a loan?

THE COURT: Let's cut it off.

MR. JOHNSTON: All right, your Honor.

THE COURT: You are just wasting a lot of time.

Well, I say you are. Therefore, I sustain the objection. Call the jury back and get on to a different subject.

Oh, it's 12:15. I will have to excuse the jury for lunch.

Mr. Marshal, you may tell the jurors that they may be excused for lunch. I forgot the hour. I am sorry. 1:30, if you can make it.

All right, gentlemen, we will be in recess until 1:30.

(Whereupon the noon recess was taken.)

THE COURT: I believe we are ready for the jury, Mr. Marshal.

(The following proceedings were held in open court before the jury.)

THE COURT: All jurors are present. All right, Mr. Johnston, you may proceed.

BY MR. JOHNSTON:

Q I want to hand you Government's Exhibit 5 again which is the 1980 income tax return. Would it be fair to say that if any responsible employee of the Internal Revenue Service looked at that return, they might consider it questionable?

MR. HENDRICKS: Objection. He doesn't know what any responsible employee --

THE COURT: Number one, we are not dealing with the negligence of any responsible or irresponsible employee of the Internal Revenue Service in issuing any refund check. That's not the issue in this case.

BY MR. JOHNSTON:

Q Can you explain to this jury why anybody in the IRS would have allowed a refund on the basis of that return?

MR. HENDRICKS: The same question in an apparent attempt to circumvent the Court's order. I object to it. Relevance.

THE COURT: What is the purpose of it?

MR. JOHNSTON: Well, your Honor --

THE COURT: In view of the fact that I have said that we are not dealing in this case with the responsibility or irresponsibility of anyone who may have looked at the 1980 return and authorized the issuance of a refund check, what is the purpose of it?

MR. JOHNSTON: I think it's a legitimate question as to why a refund would ever have been issued on the basis of the return that looks like that one, your Honor. That's my only point.

THE COURT: I will sustain the objection.

BY MR. JOHNSTON:

Q Mr. Dyas, the refund check that was issued which is in evidence as Government's Exhibit 38 is for $44,256, is it not?

A Yes, sir, that is correct.

Q And you testified I believe that that check was cashed and not deposited; is that right?

A Yes, sir. That's my interpretation of the endorsement on the check.

Q In your opinion, is there any inference to be drawn from the fact that the check was cashed rather than being deposited?

MR. HENDRICKS: Goes to an ultimate -- I withdraw the objection.

THE WITNESS: Is there any inference to be drawn?

/////

BY MR. JOHNSTON:

Q Do you feel that the cash was checked gives rise to any kind of an inference that the taxpayer intended to conceal that refund (sic).

A I don't know what Judge Claiborne had in mind when he cashed that check.

Q So, that's not my question. I think you testified that the fact that some of the fee checks were cashed might give rise to an inference that the taxpayer intended to conceal those receipts; is that right?

A Yes, sir, and I think there is a great difference between those checks and this check. Those are income checks.

Q Yes.

A This is not.

Q In your opinion when you find that the taxpayer has also cashed a $44,000 check which is not income, does that affect your opinion as to the inference that is to be drawn from the fact that he cashed some income checks?

A I think you are talking about two different things, Mr. Johnston. You are talking about on the one hand an inference of concealment of income.

Q Yes, sir.

A And on the other, this is not income.

Q Would it be fair to say that you draw the inference of an attempt to conceal only when the inference works against the taxpayer?

A No, I don't think so. I am drawing on my long-time experience dealing with criminal tax fraud cases and what I have seen as a result of my experience.

Q If you start with an experience which tells you that taxpayers sometimes cash checks instead of depositing them in order to conceal their existence, and you find in the case of a particular taxpayer that he has cashed a very large check which is not income and which he would have no motive to conceal, doesn't that affect your opinion as to the inference to be drawn in the case of the income checks?

A Not necessarily.

Q All right. Thank you.

You testified, Mr. Dyas, that in calculating the amount of fee checks that were unreported in 1979, you really had to take into account a deposit in addition to anything that was shown on the cart. Do you remember that?

A The deposit is actually reflected in the chart in the reported fees, Mr. Johnston. If you are referring to the $4,332.87 --

Q Let me show you the chart again. I won't bother to hook it up. Can you tell me where in the chart there is any reflection -- where in the chart is there any reflection or any reference to the $4,332 deposit?

MR. HENDRICKS: Asked and answered. We spent twenty minutes on this, your Honor, before the lunch break.

THE COURT: I thought you covered this, didn't you?

MR. JOHNSTON: He just gave me an answer, your Honor, which I think is inconsistent --

THE COURT: Go briefly to it, but let's not repeat of course. You may go briefly into it.

BY MR. JOHNSTON:

Q Where in the chart is the $4,000 figure reflected?

A The $4,332.87 deposit is included in the reported figure of $22,332.87. The $4,332.87 is one of four items making up that total.

Q All right.

A So it is reflected in that chart.

Q But there is nothing in the chart to indicate that that item is included in the $22,000 figure; is there?

A Not specifically because it's not a legal fee.

Q Now, I will hand you Government's Exhibit 18 and ask you please to tell us what checks made up the deposit of $4332?

A Yes, sir. Exhibit 18 shows three checks, the reading from the top of the exhibit down, the first check was issued by W. W. Galloway, Tax Receiver, Las Vegas, Nevada, a check dated April 25th, 1979, payable to Judge Claiborne for $60. The second check in the series is a U.S. Treasury check issued to the order of Harry E. Claiborne for $1,272.

The third check also is a U.S. Treasury check, paid to the order of Harry E. Claiborne for $3,000.87.

Q Mr. Dyas, it's very clear from looking at those checks that none of them constitutes fee income, is it not?

A Well, I don't think it's altogether clear just from this exhibit itself, Mr. Johnston.

Q You think when you look at some of those checks that some of those might be income fees for work that was done before the Judge took the bench in 1978?

A I have no way of knowing.

Q Have you heard any evidence in this trial at all that would suggest that the United States Government was a client for whom Judge Claiborne performed legal services before he took the bench?

A I have heard no evidence either for or against that proposition.

Q You think it's equally likely that those are fee checks or not fee checks?

A I simply don't know, Mr. Johnston, based on the evidence in this exhibit.

Q I am talking about all the evidence in the case now, Mr. Dyas. You have seen it all.

A (No response.)

Q You are unable to say that in looking at those checks and in view of the other evidence that you have heard that those are probably not fees for legal services performed?

A Well, the only other evidence was Mr. Wright's testimony that he was told at a later time that it was not fee income. That's the only thing I can think of.

Q That's the only basis you have for reaching a conclusion that those are not fee income?

A The record, except for that, is pretty much neutral because the check for Mr. Galloway, for example, indicates a refund and conceivably, although it's not legal fee income, that could be income.

Q Who is Mr. Galloway?

A He is shown as being a tax receiver.

Q All right, sir. Will you direct your attention again to the 1980 return, Government's Exhibit 5.

THE COURT: May I ask, in your computation of the unreported legal fees, did you or did you not exclude consideration of those three checks?

THE WITNESS: I did not treat those three checks as legal fee income, your Honor.

THE COURT: All right.

BY MR. JOHNSTON:

Q You have testified, Mr. Dyas, that there is no income from legal fees reported in the 1980 return; is that right?

A That's what I stated.

Q And you reached that conclusion, did you not because you don't find a Schedule C in the return on which there is income identified as legal fees?

A Well, not only Schedule C, Mr. Johnston, but conceivably, the legal fees could have been reported on Line 21 as other income.

Q Yes.

A It would not be totally improper to do it that way, especially if there were no offsetting deductions.

Q You haven't heard any testimony from the man who prepared the return, have you?

A No, I have not.

Q Do you have any way at this time of knowing that the legal fees were not taken into account in the preparation of the Schedule D that is attached to that return?

A There is no indication to me that legal fees were included on Schedule D.

Q No, sir. My question is, do you have any way of knowing that they are not included in Schedule D?

A No, sir, there is no indication that they are, Mr. Johnston.

Q Mr. Dyas, with all respect, you are not answering my question. You have no way of knowing, do you, that legal fees were not reflected and taken into account in the Schedule D?

A There is no indication that they are.

MR. JOHNSTON: Your Honor, I think I am through. I am unable to get an answer to this question apparently.

MR. HENDRICKS: Your Honor, might I respectfully move to have Mr. Johnston's speech stricken from the record?

THE COURT: Yes. Disregard Mr. Johnston's testimony, ladies and gentlemen. Lawyers frequently like to testify. Sometimes I wish I could bring them up on the witness stand and put them under oath to make them testify.

Go ahead, Mr. Hendricks. Redirect.

MR. HENDRICKS: Questions, your Honor. No testimony.

MR. JOHNSTON: May I ask that that be stricken from the record, your Honor?

THE COURT: Well, the jury is to regard the same comments by Mr. Hendricks for the same reasons.

REDIRECT EXAMINATION

BY MR. HENDRICKS:

Q Do you have the 1980 return there in front of you, sir?

A Yes, sir, I do.

Q Now, Mr. Johnston made reference to the schedule, one of the schedules in the back of the return there. What schedule is that?

A Mr. Johnston's last questions referred to Schedule D of the 1980 return.

Q Now, do you see a figure for $250,000 there?

A Yes, sir, I do.

Q What is that, does that purport to be?

A Well, this is entered in --

Q From an accounting standpoint.

A It purports to be a cost or other basis as adjusted. That's the heading of the column under which the $250,000 appears.

Q Now, can you tell the ladies and gentlemen whether -- or what a cost is? First, let me ask you this: What is this Schedule D?

A The Schedule D is used for the purpose of reporting income from the sale of capital assets or the loss from sale of capital assets, depending on the transaction.

Q Now, let me show you a document which has been marked as Government's Exhibit 5A, and ask you whether this isn't a true and correct copy of a blowup of that Schedule D?

A Yes, it is.

Q While you are testifying about this matter --

MR. GOODMAN: Excuse me, your Honor, I don't believe it's in evidence.

MR. JOHNSTON: We haven't seen it, your Honor.

THE COURT: All right. Let counsel check it.

MR. JOHNSTON: We have no objection to it being received in evidence, your Honor.

THE COURT: All right. What is the chart coming in as?

MR. HENDRICKS: Government's Exhibit 5A.

THE COURT: Let it be admitted into evidence.

(Whereupon Government's Exhibit 5A was duly admitted into evidence.)

BY MR. HENDRICKS:

Q Okay. Now, this $250,000 figure on this Schedule D, could you tell us what it purports to be again?

A All right. If you go up to the top of the column in which the $250,000 appears, up under Part 1, there is a caption headed, "E. Cost or Other Basis as Adjusted (See Instructions, Page 21)." So that purports to be cost.

Q Costing what?

A On this particular return?

Q Yes, sir.

A I don't know.

Q Let me ask you whether legal fee income could possibly have been included, could possibly have been included properly in the $250,000 figure?

MR. JOHNSTON: Objection to the use of the word "possibly", your Honor.

MR. HENDRICKS: I will restructure the question.

THE COURT: All right.

BY MR. HENDRICKS:

Q Could any legal fee income for this year have been in that $250,000 figure?

MR. JOHNSTON: Objection on the ground it calls for speculation, conclusion of the witness.

THE COURT: I think the question is whether it could properly have been included.

THE WITNESS: My answer is, it could not have been properly included there.

BY MR. HENDRICKS:

Q It could not have been?

A Could not have been.

Q Why is that?

A Because legal fee income is ordinary income, and it should not be placed on a Schedule D. Ordinary income has to be reported normally if it were legal fee income on Schedule C, although as I indicated, it could have been reported as other income on Page 1 of the return.

Q And was it?

A It was not. There was neither a Schedule C on the 1980 return or was there any entry for other income on the return.

Q All right. Now, there's another figure, $150,000; is that right?

A Yes.

Q What does that purport to be?

A All right. Again referring to the column heading which is D, up under Part 1, and these column headings apply to both Parts 1 and Part 2, D states, and I quote, "Gross sales price less expense of sale."

Q Now, is there any evidence in this case as to what the $150,000 was comprised of?

A No, there is not.

Q Would it have been appropriate to include in his 1980 legal fee income the $150,000?

A No, sir, it would have not.

Q Why not?

A Because again the use of Schedule D is for reporting the sale of capital assets and legal fee income is not a capital asset.

Q And how should the legal fees have been reported?

A The legal fees should have been reported either on Schedule C or possibly as other income.

Q And have you had occasion to examine the 1979 return?

A Yes, sir, I have.

Q And what legal fees were reported? How were they reported?

MR. JOHNSTON: Objection on the ground that it's beyond the scope of the cross-examination.

THE COURT: Overruled.

THE WITNESS: The legal fee income for 1979 was reported on Schedule C as income from legal fees. Income from a profession. It's ordinary income.

BY MR. HENDRICKS:

Q Now, there is a final figure there, $100,000. What does that purport to be?

A The $100,000 is again referring to the heading right under Part 1 in Column F, "Loss", and it says, "If Column E is more than D, subtract D from E." So this purports to be $100,000 loss as the result of subtracting the $250,000 from $150,000.

Q The other way around?

A Well, actually it makes a negative figure because you subtract cost from selling price in the usual sales.

Q So then the -- so then it does not appear, well, does it appear that any legal fee income for the year could properly have been in this $100,000 figure?

A No, sir, it could not have.

MR. HENDRICKS: That's all I have. Thank you.

THE COURT: Cross-examine?

RECROSS-EXAMINATION

BY MR. JOHNSTON:

Q Mr. Dyas, Mr. Hendricks asked you whether legal fees could be included properly in the column which is headed "Cost or Other Basis". That column doesn't have anything to do with income or receipts, does it?

A Normally not, no, sir.

Q If you had a sale of a capital asset, the money that you got upon the sale wouldn't be in that column, would it?

A No. It should be reflected in the other column.

Q The gross sales price?

A Which I testified to previously.

Q All right, sir. Now, would you read for the jury, please, the handwritten notation that appears in the upper left-hand corner here, if you can read it, from the return, Mr. Dyas. It's a little difficult.

A All right. There are several abbreviations in this caption, Mr. Johnston.

Q Yes.

A So there is going to be some interpretation, if you will.

Q That's fine. Read it the way it's written and then interpret it so it is intelligible to us as we listen.

A All right. The word is "Ackts," the second word "Rec from law practice left on ltr of confirmation to Judicial/US court appoint."

Q Now, will you read it with an interpretation that makes it intelligible?

A I am not sure it is intelligible, but I will read it, "Accounts receivable for law practice left upon letter of confirmation to judicial U.S. court appointment."

Q What do you understand the reference to accounts receivable to mean?

A I really don't understand it, Mr. Johnston, because it isn't something that belongs on this schedule.

Q What is an account receivable, Mr. Dyas?

A Well, an account receivable would be something that would be predicated as the result of the rendering of services or the sale of inventory by a taxpayer. That's the normal context.

Q Well, in the case of a professional person, like an attorney, what would an account receivable mean?

A It normally would mean that it was collection of a payment for legal fees.

Q Yes. So that if the person who was a lawyer did some work and earned a fee and the fee is not paid to him promptly, that becomes an account receivable, doesn't it?

A Yes. In normal accounting description.

Q Yes. Do you have any idea what that reference means in the return?

A Not really. It just doesn't belong there.

Q Well, does it occur to you that that might have some reference to fees that Judge Claiborne had earned while he was a practicing attorney and that were paid to him later?

A I really don't know.

Q Prepared 1980 return, Mr. Dyas?

A All right. On Page 2 of Government -- I am sorry -- Page 2 of form 1040 of Government Exhibit 5, the return bears the stamp "Creative Tax Planning, Lamb, Watson Consulting, 1700 East Desert Inn Road, No. 412, Las Vegas, Nevada, 89109."

There is a signature in ink which, because of the stamp over it, I can't really read.

Q All right. But he is not the same person who prepared the 1979 return, is he?

A No, Mr. Wright testified he prepared the 1979 return.

Q And his name appears on the return, does it not?

A I am sure it does.

Q Finally, Mr. Dyas, looking again at Schedule D, that schedule purports to compute a $100,000 long-term capital loss, doesn't it?

A Yes, it does.

Q How much of a deduction did that result in in this return?

A That resulted in a $3,000 deduction, about which I testified previously and that appears on Line 14 on Page 1 of the form 1040 for 1980.

Q Will you explain to the ladies and gentlemen of the jury why a loss of $100,000 in that year would have justified a deduction of only $3,000?

A If it were a true capital loss, there is a limitation on the amount that can be deducted against ordinary income.

Q So the net effect of showing a $100,000 long-term capital loss on Schedule D was to produce a $3,000 deduction on the face of the return; is that right?

A Yes, and it would also result in a carryover to future years.

MR. JOHNSTON: Thank you, Mr. Dyas.

THE COURT: Anything further of Mr. Dyas, gentlemen?

FURTHER REDIRECT EXAMINATION

BY MR. HENDRICKS:

Q Mr. Dyas, you haven't heard any testimony or evidence relating to the $250,000 figure there, have you?

A No, sir, I have not.

Q Or any evidence relating to the $150,000 figure at all, have you?

A No, sir.

Q Would it have been reasonable for you to assume that any legal fee income was included in the $150,000 figure?

A No, sir.

Q Can legal fee income ever be part of a capital gains transaction?

A No, sir.

Q Why is that?

A Because, under 612(2)(1) of the Internal Revenue Code, income from personal services or sale of inventory is not a capital asset.

Q That's fundamental accounting, isn't it?

A Yes, it's very basic.

MR. HENKRICKS: Thank you.

FURTHER RECROSS-EXAMINATION

BY MR. JOHNSTON:

Q Mr. Dyas, the prosecution has not presented any evidence at all to explain how that return was prepared, has it?

A There has been no witness, no, sir.

MR. JOHNSTON: Thank you.

THE COURT: I take it that concludes the testimony of Mr. Dyas, gentlemen?

MR. HENDRICKS: Yes, your Honor.

THE COURT: Thank you, Mr. Dyas. You may stand down.

(Whereupon the witness was excused.)

THE COURT: Who is the next witness, Mr. Hendricks?

MR. HENDRICKS: Your Honor, we would request at this time a few moments to check over the exhibits with the clerk.

THE COURT: Yes. Suppose I let the jury take its relaxed walk to the jury room. They will be more comfortable there.

(Whereupon the jury was excused and the following proceedings were held in open court out of the presence of the jury.)

THE COURT: Government's Exhibit 41, which has been the subject of some redacted version, and which Mr. Goodman earlier stated his objections to that redacted version, will be admitted with some cautionary instruction to the jury at the appropriate time.

MR. GOODMAN: May my objection be continuing, your Honor?

THE COURT: Yes, you don't have to restate it.

MR. SHAW: Your Honor, we believe there is one exhibit that we would like to move at this time and that would be Government's Exhibit No. 2, which is the 1978 tax return. We would offer that for two reasons. Number one, during the questioning of the summary witness by Mr. Johnston, there was discussion concerning the treatment of income as being on the Schedule D and we believe that the '78 return is probative of that suggestion by Mr. Johnston in that it shows that the business was written off in 1978.

Number two would be that Mr. Johnston had opened the door in his questioning of Mr. Wright yesterday, I believe, concerning Mr. Wright's calculation of the total income for 1978 that he had sent to the financial institutions. Mr. Wright testified that he calculated that figure from the 1979 return, and we believe that that is now -- that he has now opened the door for the '78 return to corroborate Mr. Wright's testimony in that regard.

THE COURT: You mean in preparing the 1979 estimate?

MR. SHAW: In putting in the letters that he wrote to the Stanwell Mortgage and to the other companies Mr. Johnston asked him how it was that he got that $78,000 plus figure for the '78 year, and he testified that he got the 78,000 plus dollar figure for the '78 year from the '78 return. It certainly opened the door to the introduction of the '78 return.

MR. JOHNSTON: If the Court please, my recollection is that Mr. Wright was unable to explain how he arrived at that figure. He couldn't explain it from the '78 return.

MR. SHAW: Until redirect, because the door was opened.

MR. JOHNSTON: The Government has previously filed a memorandum.

THE COURT: What I am concerned about, and the relevancy of the '78 return, is the limited extent that it does so indicate. Apparently there were write-offs for the sale, the disposition by Judge Claiborne for the calendar year 1978, quite properly with respect to his library and his disposition of other capital assets.

MR. SHAW: In addition, it would show a course of conduct by the taxpayer of knowing that he needed to report ordinary income on a Schedule C, and of course, that was raised now for the first time by the suggestion of Mr. Johnston's questions concerning the Schedule D. Certainly the '78 return is probative of the fact that Judge Claiborne knew that he had to report ordinary income as ordinary income.

THE COURT: Well, Judge Claiborne's contention in this case is that he didn't even read the '80 return, nor the '79 return, although he signed them and the '79 return may have been signed in blank. We don't know.

I am going to admit the '78 return with a cautionary instruction that it's purpose is to show what disposition of the capital assets may have been made in connection with the return prepared and filed for the year '78, but that under no circumstances is this defendant on trial for any violation of tax regulations or laws with respect to the year 1978.

MR. JOHNSTON: May I be heard just a little further, your Honor?

THE COURT: All right.

MR. JOHNSTON: The Government has represented in the memorandum filed and again Mr. Shaw's statement just now that the 1978 return reported the disposition of the practice; that's totally incorrect. There is no reference in the 1978 return to the disposition of the practice, only of the library and some taxable assets.

THE COURT: Let me see Government's Exhibit 2.

There is a Schedule C return filed.

MR. JOHNSTON: Simply the fee income and the office expenses connected with the income.

The critical schedule, your Honor, and mine is chopped off again, is about four pages from the end I think, up in the top portion it says, "Complete library." That's apparently written in in pen and pink ink apparently. That reports, purports to report the sale of the library, but not the practice.

THE COURT: Well, he never sold the practice to anyone; we know that.

MR. HENDRICKS: Your Honor, the schedules attached to the return show not only the complete library, but also various other tangible aspects of the practice, including the furniture and fixtures, there is a schedule that reports complete disposition of furniture and fixtures.

THE COURT: It shows equipment.

MR. HENDRICKS: There is a schedule that reports the depreciation and write-off of leasehold interest. In fact, all of the tangible aspects of the practice are reported. The only aspect that is not reported is the goodwill that Judge Claiborne may have had in the intangible aspects of the practice.

MR. JOHNSTON: I suggest, your Honor, when we talk about the sale of the practice, we are not talking about just tangible assets like books and equipment.

THE COURT: Equipment is in the list at length: Olympia typewriter, desk, steno chair, IBM typewritter, Smith Corona electric typewriter, file cabinets, two of them, desk and chair, vacuum, another typewriter, another electric 18mm typewriter, copy machine, vacuum cleaner, calculator, television, swivel chair and another desk. If they are not all capital assets, I don't know anything about what is meant by it.

He has here at the bottom, "This equipment was given to employees or abandoned when I became a U.S. District Court Judge and closed my office and private practice."

Then there is another page continuing, "landscape improvements abandoned, remodeling, office remodel, new carpet."

I am going to admit it, but tell the jury this isn't a complete disposition of his law business as such, in that sense of the word. He retained obviously the right to collect accounts receivables from, at least from Mr. Echeverria and also from Mr. Brown and Miss Quintana, according to the evidence. One other check I don't remember. He certainly collected them.

MR. JOHNSTON: I am sorry. If I understand the Government's position is the fact that he reported the disposition of these tangible assets in 1978, is somehow inconsistent with purporting to report the sale of the practice in 1980?

THE COURT: You're sure right.

MR. JOHNSTON: The Schedule D in 1980 refers only to accounts receivable. It doesn't speak of tangibles at all and the accounts receivables are not dealt with in the 1978 return. I suggest they are not consistent.

THE COURT: Under the law, an account receivable that might be due an attorney when he either quits practice or in turn goes on the bench, if he makes a sale of the accounts receivable, fine, but I have heard no evidence in either this or the prior trial that any sale of accounts receivables was ever forthcoming.

MR. JOHNSTON: I want to be very clear that I hold no brief for the manner in which the 1980 return was prepared.

THE COURT: I thought maybe you were going to uphold Mr. Watson.

MR. JOHNSTON: No, sir, I am not. The 1980 return was not properly prepared. There is no question about that. We don't argue about that.

THE COURT: The man ought not to be permitted to prepare tax returns.

MR. JOHNSTON: I won't express an opinion on that, your Honor.

THE COURT: All right. I am going to admit it and tell the jury that under no circumstances is Judge Claiborne charged with any improper or illegal return for the year 1978, but that in view of the fact there is now evidence with respect to so-called Schedule D in the 1980 return which may indicate something with respect to the disposition of the business or capital asset that the 1978 return may be considered for that limited purpose.

MR. JOHNSTON: Your Honor, the income that's reported on the 1978 return is not in issue. Would it be acceptable to the court simply to admit the Schedule D in evidence and not the rest of the return? It doesn't bear on these matters that we are talking about.

THE COURT: If you can get a stipulation on the information with respect to the Schedule D return was attached to the 1978 return, but you gentlemen, as I well know, don't stipulate to the time of the day. I am perfectly willing to get down to the meat of it, namely, that my only purpose that I see is a legitimate purpose, is because of the claimed disposition of capital assets, plus the fact that you and in examining and Mr. Dyas asked him to try and interpret accounts receivable and --

MR. JOHNSTON: That was on the 1980 return, your Honor.

THE COURT: Yes.

MR. JOHNSTON: May I suggest to your Honor that the Schedule D of the 1978 return --

THE COURT: I can defer it until later on ruling on this exhibit, but I intend and I will do so, but I intend to let it come in evidence in due time.

MR. JOHNSTON: I was about to suggest, your Honor, that you could tell the jury that that was a part of the 1979 return. I don't know that the stipulation of counsel is required for that.

THE COURT: I don't know. If I take up just a part of an exhibit without the express stipulation of the parties, I don't think a judge has a right to just pair off a portion of a tax return and hand it to the jury.

In any event, why can not I properly defer on the 1978 return? I don't see where it makes a bit of difference as far as the Government's case in chief is concerned.

MR. SHAW: We agree, your Honor, with that. That would be the Government's evidence.

THE COURT: The Government rests?

Get your motions in for the record, if you will, gentlemen.

MR. JOHNSTON: Yes. We wish to make a motion, and I would like to be heard on it if I may?

THE COURT: Well, that's what I am asking you.

MR. JOHNSTON: I prepared a short memorandum, your Honor, and I am sorry it doesn't have the caption on it, but I hope that won't confuse you.

As your Honor well knows, of course, the question at this point in the trial is whether the evidence that has been presented to this point is sufficient to convince a reasonable juror beyond a reasonable doubt of the defendant's guilt on any one of the three counts that we are concerned with in this trial.

I'd like to take them up separately and I make the motion with respect to all three counts for a judgment of acquittal. But I wish to argue particularly with respect to Count VI and VII.

As to Count VI, your Honor, there has been absolutely no evidence of any kind presented to this Court on the element of willfullness, which is one of the elements of the offense.

All we know is -- all we have in evidence at this point is the fact that Judge Claiborne received items of income that don't appear to be included in the return from the face of it, and that the return is filed.

There is no evidence of any kind from which an inference of, a legitimate inference of willfullness on his part could be raised.

Now, that's precisely the point that I have addressed in the memorandum that I have prepared for the Court's consideration.

As to the seventh count, the alleged false statement in Section 1001, again, willfullness is an essential element of that offense. The burden of the --

THE COURT: How could you prove willfullness? The Court cannot require a defendant to testify, number one. I don't know what was in Judge Claiborne's mind. But there are thousands and thousands of cases that go to a jury where a defendant has not testified.

MR. JOHNSTON: I agree, your Honor, but in order to sustain the burden of the Government's proof at this stage, our position is there must be some evidence of willfullness beyond the mere file of the return and the receipt of income.

THE COURT: Why wouldn't the failure to report a $37,500 check cashed at the Golden Nugget or carry with it -- you mean to tell me -- and not report it, or any of these checks --

MR. JOHNSTON: Your Honor, I have cited cases and quoted from them in my memorandum which I think answers your Honor's questions. I know you haven't had an opportunity to read it yet.

THE COURT: I haven't had an opportunity to read your cases but I am going to deny your motion as to all of the counts, namely, V, VI and VII because those are the only counts we got left.

MR. JOHNSTON: Is your Honor not willing to hear argument on Count VII?

THE COURT: No. Go ahead.

MR. JOHNSTON: All in the world that there is in evidence at this point in time that there was any kind of a loan to Judge Claiborne in 1978 is a notation written on the upper right-hand corner of an account's work sheet and the accountant testifies he has no recollection of any conversation or other communication whereby he got that information --

THE COURT: I can understand after five years or so that, but he also testified as to the conversation he had and whether his recollection is correct might be an arguable matter. There is no question about that.

MR. JOHNSTON: He testified on direct to every question that counsel asked him that Judge Claiborne told him. When I asked him on cross, he acknowledged very honestly that he had no specific recollection of any conversation with Judge Claiborne.

THE COURT: All he said, he said he talked to Judge Claiborne about the $75,000. Judge Claiborne said it was a loan. This was after January 16th, 1979, and Judge Claiborne also said that it was "to pay his 1977 income taxes."

Now, he has no present recollection maybe, but he has testified to this effect.

MR. JOHNSTON: Your Honor, I submit that on a proper motion that testimony should be stricken because he has no recollection. He can't testify without a recollection. He acknowledged on cross-examination that he has no recollection of any conversation. Additionally, I point out that there is no other evidence in the case of a loan. There is no lender been identified in spite of all the investigative effort of the Government.

THE COURT: I agree with you there.

MR. JOHNSTON: There is no evidence of repayment, interest being paid or of a deduction being paid for interest paid. All we have is this handwritten notation and all we have is Mr. Wright's testimony which really is that because he wrote it on there, it must be that the Judge gave him the information.

THE COURT: I think that provides you a forceful argument for the jury.

MR. JOHNSTON: I think that should get us past the motion at this point, your Honor.

THE COURT: Not with me. I have got to take the Government's evidence and all proper inferences to be drawn therefrom, which are most favorable to the Government.

MR. JOHNSTON: My understanding is somewhat different from that. I think that the Court's burden at this point is to consider all of the evidence that's in and on the basis of all the evidence, not just that that's most favorable to the Government to make a judgment whether a reasonable juror could reasonably be convinced beyond a reasonable doubt that this man is guilty. I submit on that standard --

THE COURT: Not the trier of fact. I deny the motions with respect to Counts V, VI and VII.

Are we ready to proceed with the defense, gentlemen?

MR. GOODMAN: Yes, your Honor. Could we have a brief recess so I can make sure my witnesses are lined up?

THE COURT: We will take a ten-minute recess.

(Whereupon a recess was taken.)

MR. GOODMAN: Excuse me, your Honor. Before our witness takes the stand, would it be possible for the prosecution to state that they rest in front of the jury? I don't believe they have done that.

MR. HENDRICKS: Yes, your Honor. Perhaps we should reurge the Government's 2.

THE COURT: I will tell the jury that the Government has rested. I don't think there is any magic as to who says it.

MR. GOODMAN: If the Court says it, that's fine.

(The following proceedings were held in open court before the jury.)

THE COURT: Members of the jury, the Government has rested its case in chief, and now we proceed with the defense witnesses.

All right.

GENEVIEVE McELWAIN, DEFENSE WITNESS, SWORN

THE COURT: Would you please state your name in full and spell your last name.

THE WITNESS: Genevieve McElwain, M-c-capital E-l-w-a-i-n, G-e-n-e-v-i-e-v-e.

THE COURT: All right, Mr. Raggio.

MR. RAGGIO: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. RAGGIO:

Q Mrs. McElwain, is it not?

A Yes.

Q You are married?

A Right.

Q Where do you reside?

A 5983 Judson, J-u-d-s-o-n, in Las Vegas.

Q And for what period of time have you resided in Las Vegas?

A Approximately 1970 until now.

Q And do you know the defendant in this matter, Judge Harry E. Claiborne?

A Yes, I do.

Q If you can tell us, when did you first meet Judge Claiborne?

A I was hired through Kelly Girl and I worked temporarily for him on two separate occasions. Then I came to work for him direct, some time during 1970, I believe.

Q And at that time, 1970, was Judge Claiborne a practicing attorney?

A Yes, he was.

Q If you recall, where was his office located?

A 103 South Third.

Q And is that in Las Vegas?

A Yes, it is.

Q For what period of time did you work for him initially as I believe you said, a Kelly girl?

A It was for a short term, probably a week.

Q And after that, did there come a time when you became permanently employed by, or regularly employed by Mr. Claiborne who was then an attorney?

A Yes. Through August 31 of 1978.

Q Then would it be fair to say that you worked with him almost the entire seven or eight years?

A Yes.

Q And what were your capacities or functions in working with Judge Claiborne at that time?

A When I started with him, it was a one-girl office. I was secretary to Judge Claiborne and two other attorneys.

Q Who were the two other attorneys?

A Annette Quintana and James Brown.

Q During the entire time that you were with Mr. Claiborne until I believe you said some time in 1978?

A Yes.

Q Were both of those persons with him as attorneys, as associates?

A Yes.

Q Did you function as a legal secretary?

A Yes.

Q And were there other employees during those years in addition to yourself and the attorneys whom you have named?

A Yes, but not for the first, probably four years. Then there was another secretary.

Q Can you tell us her name?

A We had -- there were two or three girls. We had a girl named Judy Twaits. There was the secretary that they had when I came in. She came back for a short period of time, and her name slips my mind for the moment, and then we have Renae LeBas. (sic)

Q Do you want to spell her last name?

A L-e - capital B-a-s. And she was there when I left in August.

Q Now, during the time when you were the lone secretary, did you have functions other than those of a usual legal secretary?

A It was the usual functions in a one-girl office.

Q What would those be?

A Answering the telephones, talking to clients when they came in, talking to clients on the phone, typing up the legal pleadings, instructing the runner, answering the telephones for three attorneys.

Q Did you have anything to do with recordkeeping during that period of time?

A At the beginning it was just a matter of writing a receipt when moneys were received, whether this was in cash or whether it was by check, and then making the deposits at the bank.

Q Now, did you have anything to do with establishing a system of recordkeeping in the office?

A Yes, I did. I don't know when I established it but I discussed this with Annette Quintana, thinking that because clients were coming in and paying, that it would be beneficial if I devised some sort of a system of keeping records. So it was just a simple, very simple bookkeeping procedure. I took, they are larger than the 3x5 cards. They are the next size of cards.

Q You mean regular, like a large index card?

A Yes, uh-huh, and I would type the client's name and address. I would type what the fee was and then I would type in or write in whenever they made payments against this fee.

Q And would you do that with respect to the individual clients, each individual client?

A Yes.

Q So that there would be, for each client for which any fee was anticipated, this type of card?

A Correct.

Q At what point in time, if you can tell us, or as approximately as you can, did you set up this card system?

A I would have to say about three years after I came.

Q And can you tell the jury during at least the last four to five years of your service there, your employment that that system was maintained to and including the date of your termination?

A That's correct.

Q And the date of that termination would have been what date?

A The day before he was sworn in as judge, August 31, '78.

Q Would it be correct and accurate to say that August 31, 1978 was the last day that the law office of then Harry E. Claiborne was in operation and that he assumed the bench the following day on September 1, 1978?

A That's right.

Q And with reference to this bookkeeping system, in addition to the card that you kept, did you keep and record fees or deposits in other documents or books?

A I beg your pardon?

Q What did you do in addition to the file cards or the cards on which you placed the fee information? What did you have insofar as records are concerned?

A These cards were kept in a wooden box. They were kept alphabetically and they were always kept until the client had paid in full, or the case was concluded, at which time the card would be put in the file itself and closed out.

Q And when fees were paid, either by cash or in check, was there any record made of that in addition to these cards?

A We had a deposit book.

Q Before a deposit book, was there any kind of a receipt book?

A I am sorry. Yes, there certainly was. Yes, there was a receipt book. This was the standard kind that you get at any stationary store. It has three receipts to a page and there were two carbon copies of the receipts.

Q In other words, there was an original page, or a page with three receipts on it, and then there would be two carbon pages underneath that; is that what you are saying?

A That's correct. So that the client was given the original and there was always a permanent record of that transaction there in the deposit, or the receipt book.

Q What period of time was such a receipt book maintained?

A It was always there. They were never thrown away. They were always kept as a permanent file in the office.

Q And over what period of time did you actually maintain a receipt book?

A From the time I started, it was there when I came, and that same type of book was kept until the day I left.

Q Was there -- were there numbers on the receipts?

A Yes.

Q Were they essentially numbered?

A Yes.

Q And would you tell us then just exactly if somebody came in and paid a fee or you received a fee in the mail, how you handled that transaction with reference to the receipt book?

A If the client was there in the office and had made a payment, I would do a receipt for them. If this was money that was received in the mail by way of a check, I might not write the receipt that particular moment, but it was always kept in the receipt book in an envelope and before I went to the bank I always made a receipt for that particular transaction and then I would put it on the individual card that I was keeping.

Q Now, in those cases where someone would mail in a fee or perhaps not receive, actually receive a receipt, was a receipt in fact made?

A Always. I was instructed that way.

Q And who instructed you in that manner?

A I was instructed by both Annette Quintana and Harry Claiborne.

Q What general instructions if any were you given by Mr. Claiborne with reference to keeping such records and fees?

MR. SHAW: Objection, your Honor. That would be hearsay.

MR. RAGGIO: This is instruction given by Mr. Claiborne to this witness, your Honor.

MR. SHAW: That's why it would be hearsay.

THE COURT: I think it is a matter of the course of the operation of that business. I will admit it.

BY MR. RAGGIO:

Q Do you understand the question?

A May I answer?

Q Yes.

A Okay. I was instructed by both how important it was, because I had never done this type of work before. I had never done, where I was the only girl in the legal office where I had had to keep these records. It was stressed to me how important it was to maintain proper records, that there would always be a record of money that came into the office, and money that was deposited and the two had to tally. You had to have a receipt and you had to have a notation on the deposit slip.

Q And that was true whether the fee was received in cash or in check or some other form of payment?

A Always. Always. And on the deposit slips, they were preprinted by the bank. They came bound in a book. There were two to a page.

Q Now, you are talking about the deposit slips?

A The deposit book, right.

Q First let's establish at what bank these deposits would have been made during this period of time?

A The First National.

Q And do you know the branch?

A Yes, it was the main office downtown. It was only about half a block away.

Q Is that on East Carson Street?

A Yes.

Q And describe for us the type of deposit book that was furnished to you by the First National Bank?

A They were two to a page. That was the original, and then there was a carbon -- there was a copy, and you put in a carbon copy, a piece of carbon paper so that whenever you would mark an individual deposit, there would be a record, a carbon copy on the second page. The original, of course, was torn out and attached to the checks or money that you were depositing.

Q When you made the deposit, you delivered that to the bank?

A You made the deposit so that if it were a check, you would have the bank number, you would have the amount. If it were cash, naturally all of the cash would be indicated at the top or where it says "currency" and then on the carbon copy itself, I always wrote in who the money came from, the client's name and if there were more than one cash deposit, this was always indicated. I always had every person who had made a transaction with us, I always made a record of that.

Q Were you the individual who consistently maintained both the receipt book and the deposit book?

A Yes.

Q Were there some instances where you may have been ill or something and someone else did that?

A Yes, that would have happened. I don't know about the deposits. My recollection is that that was kept until I returned. But the receipts would have been written.

Q Can you tell the ladies and gentlemen of the jury and the Court that that was the system that you diligently followed until August 31, 1978?

A Always.

Q During that period of time, were you ever given any instructions to do differently by Mr. Claiborne?

A Never. I was very impressed with his regard that, of the accuracy to be maintained in the office, and he was always very explicit to me in telling me what the fees were, what was still owing. This was when I first set up the system, and how the payments were to be made.

Q Where did you physically keep the receipt book and the deposit book?

A In my second drawer of my desk. It was a wooden desk with a drawer in the front and then it had the three drawers on the right side. It was kept in the second drawer.

Q And when you received fees in the way of checks and or cash, where did you keep those items until you made a deposit?

A The checks were kept in the envelope in the desk drawer. And if it were a small sum of money, it might be kept there. Otherwise, they were put in the safe in the office.

Q Would you then make a deposit at frequent intervals at the bank?

A It depended on the flow of the income, whether it was a large amount of money. I didn't like to make too many trips to the office, because it was only a one-girl office, and I always, usually went about twice a week. If it happened that we received a large sum of money, over $100, I didn't like to keep cash in the office. I might keep it overnight, but I got to the bank the next morning.

Q So would it be fair to say that you made deposits not at regul r, on regular days, but as the occasion required?

A That's correct.

Q Do you know Jay Wright?

A Yes, I do.

Q And who is Jay Wright?

A Jay Wright was the accountant for Judge Claiborne at that time, through all the time that I was there.

Q And to your knowledge during all the time you were there, did Mr. Wright act as the accountant for Mr. Claiborne's law practice?

A That's correct.

Q What information, if you know, was provided to Mr. Wright as a general matter of course over these years?

A Yes.

MR. SHAW: I wonder if we could define the years we are referring to here?

BY MR. RAGGIO:

Q Mrs. McElwain, unless I indicate otherwise, when I say "these years", I am talking about the years you served in the capacity of a legal secretary to then Mr. Claiborne, now Judge Claiborne.

A   I am aware of that.

Q   Do you understand that to be the predicate of my questions?

A   Yes, I do.

Q   My question, if I can help you, would be over these years that you served, what information as a matter of course was provided to Mr. Wright who was acting as the accountant for Mr. Claiborne's law practice?

A   Every month, without fail, Mr. Wright received a manila envelope. It was marked with the month and it was marked with the year. Judge Claiborne kept beside his desk the checkbook, and he wrote his own checks out for bills that he was paying. He would make a notation on the bill of the date and the check number and those would go in this envelope and at the end of the month, without fail, I always -- well we don't have a xerox, I refer to it as a xerox, I would copy the copies for the entire month of the deposits and the receipts. They were stapled together. Judge Claiborne would give me the envelope. I would put the copies of the checks -- of the receipts and the deposits in that envelope, and then the normal procedure was that Mr. Wright came by and picked up that envelope some time within the week following the end of the month.

Q So to be perfectly clear, each month Mr. Wright, if I understand your testimony, was provided an envelope in which one copy of all receipts were given; is that correct?

A That is correct.

Q And copies of all bank deposits were given to him?

A I know that to be a fact.

Q And if I understood you, the bill or bills that were paid with an indication on the bill by Judge Claiborne that --

THE COURT: Mr. Raggio, I see Mr. Shaw standing. I know what he wants to say and that is to put you under oath and let you testify. Please ask the witness.

MR. RAGGIO: Yes. All right, your Honor.

THE COURT: Without leading.

BY MR. RAGGIO:

Q Was it the fact that in addition to the receipts and the deposits that the items of expense were also provided to Mr. Wright?

MR. SHAW: Objection.

THE COURT: Sustained. It's a leading question. Please rephrase your question.

/////

BY MR. RAGGIO:

Q To your knowledge, each month did Mr. Wright receive all of the expense items that were paid?

THE COURT: I will permit that.

THE WITNESS: He received the entire envelope every month and in that envelope were copies of the deposits and copies of the receipts for that month. This was a monthly package that he received. That envelope also had any bills that Mr. Claiborne had paid. It was a monthly account that he received.

BY MR. RAGGIO:

Q Now, with reference to the receipts of fees, when you said "copies", how were these copies physically made?

A This was a deposit book, so I would have to take it over to the machine and hold it open and photograph that particular page.

Q Is this the one that had the three receipts on it?

A Yes. And because there were numerical, there were numbers on them in sequence, when I got through copying because one copy might not have taken, I would always check to make sure that the numbers were there, they were in sequence and I had not missed a page.

Q Did you do the same thing with reference to the deposit book?

A Yes.

Q Over the -- let's talk about the last four years now that you were there so we would cover 1974 or '75, '76, '77, '78, the last four years. During all of these years, did you provide to Mr. Wright all of the receipts, each and every month?

A Yes. And when he was -- after he had received the envelope, if either he or his wife had questions pertaining to a check that Mr. Claiborne might have written, they would call me on the phone and they would say, "What is this for", and "Where should I credit it to?" And if I didn't know the answer, then I would check with Judge Claiborne.

Q Was there ever a time, to your knowledge in any of the years that you were there, including 1978 or any preceding years, that Mr. Wright, Jay Wright, was not furnished copies of all the receipts for fees?

A He always received the monthly envelope. When he was finished, they were returned to us and they were kept in a cardboard -- you can buy from a stationary store a filing box that you can put files of one sort or another in. They were kept in there for each year, a box would contain a whole year's envelopes that were marked with the month and the year. And they were never returned to us until they were finished using those at their office to keep their accounts.

Q And I am not sure you answered my question precisely.

A Okay.

Q I am talking now about copies of receipts for fees paid.

A He always received those.

Q All of them?

A Always, faithfully and I never failed, and he always got them.

Q And that was true, was it, for all years, not only 1978?

A For the entire time I was there, and I was told that was the system before I came and I was just maintaining that.

Q Was that also true with respect to the deposit, copies of deposits?

A Yes.

Q To your knowledge, during the time that you were there until the date of August 31, 1978, do you know of any such information that was not provided to Mr. Wright?

A No. I was always told to be cooperative in every respect.

MR. SHAW: Objection, your Honor. A yes or no question.

THE COURT: Yes. A yes or no question.

MR. RAGGIO: Your Honor, the answer was if you know of any instance?

THE WITNESS: No.

BY MR. RAGGIO:

Q How frequently would you see or hear from Mr. Wright in this connection?

A Usually every month I would get a call. There would be two or three items that they didn't know where to apply this, and then I would check with Mr. Claiborne and then get back to them.

Q Would you do that yourself?

A Yes.

Q On any other occasion would Judge Claiborne, to your knowledge, furnish information?

A Furnish? I don't understand the question.

Q Well, was it always you who gave Mr. Wright the information or did Judge Claiborne ever give him that information?

A No. It was me.

Q Now, were there occasions when you had furnished information to Mr. Wright that you were ever requested to furnish it again?

A There were times when he would have to be given information more than once.

Q Or furnish additional copies.

A There was one time, yes.

Q Now, do you know the reason for that?
A He couldn't find it.

THE COURT: You stated earlier, Ms McElwain, that deposits and receipts would always coincide. Did you write a receipt for a plain item such as a refund of court costs or anything like that that you could possibly?

THE WITNESS: Yes. Yes, I did. Because that was money that I was depositing and the sum total of all of my receipts had to equal the sum total I was depositing. It had to be an accurate record.

THE COURT: As far as you know at that time, did Judge Claiborne only maintain one bank account?

THE WITNESS: He had an old trust account, but it wasn't used that often.

BY MR. RAGGIO:

Q And this was a business account that you are talking about, was it not?
A As far as I knew, it was used for business and personal.
Q Both?
A Yes.
Q Directing your attention now to the last day of the law office on August 31st of 1978, how would you describe, let's say, the last week of the office routine?
A It was very hectic. It had been from the time we knew

for certain that Judge Claiborne had been accepted and he was to be the federal judge.

Q He was to be sworn in on September 1st; is that correct?

A That's correct.

Q What were you involved in doing during that last few weeks?

A We were trying to locate clients -- first of all, there were some cases that were not concluded and that would be going -- they were asked, the clients were asked if they wanted to continue on with one of his two associates in their own practice or did they prefer to pick up their file and go to another attorney. So it was a matter of contacting clients. It was a matter of -- there are a lot of people that came in to see Judge Claiborne. There were a lot of phone calls. There was the general routine that you go through to close up an office.

Q What were you doing with reference to equipment and files and matters of that kind?

A We were trying to locate clients as I said. They were stacked in boxes. It was just -- it was very hectic.

Q Were you doing anything as far as physically removing items from the office?

A I don't recall that.

Q How would you describe the general atmosphere in the office during the last two days?

A It was very emotional. Everyone was very happy. People were coming in. There were constant interruptions. There was the packing up of the supplies. A lot of boxes all over.

Q Do you recall on that last day of August 31, seeing Mr. Wright and talking with Mr. Wright?

A Yes, I do.

Q Tell us about it.

A Judge Claiborne, in the morning asked me to call --

MR. SHAW: Objection, your Honor, if we are getting into the hearsay statement of either Judge Claiborne or Mr. Wright --

THE COURT: Never mind. You may say that Judge Claiborne asked you to call him, but don't say what Judge Claiborne asked you to ask him.

THE WITNESS: He just asked me to get him on the phone for him, which I did.

THE COURT: All right.

THE WITNESS: And then he came in, I believe it was in the afternoon, to the best of my recollection. Mr. Wright came into the office and said that he --

MR. SHAW: Objection, your Honor.

THE WITNESS: Oh, okay. I'm sorry.

MR. RAGGIO: I think she can tell us what Mr.

Wright --

MR. SHAW: What exception would that be?

BY MR. RAGGIO:

Q Tell us what Mr. Wright did?

A He had an envelope for Judge Claiborne and he said it was --

MR. SHAW: Objection, your Honor.

THE COURT: Sustained.

BY MR. RAGGIO:

Q Don't tell us --

A I am sorry.

Q Don't tell us what he said. The Judge has ruled you cannot say what Mr. Wright told you.

A Right.

Q What did he do when he came into the office?

A He came in; he had an envelope for Judge Claiborne. I buzzed Mr. Claiborne and I told him Mr. Wright was here and he had his tax statement and then he went into the office.

THE COURT: Did you see the contents of the envelope?

THE WITNESS: No, I did not.

MR. SHAW: Move to strike her answer.

THE COURT: You cannot testify to that, Ms McElwain. You cannot testify to what somebody may have told you.

MR. SHAW: Move to strike that answer, your Honor.

THE COURT: Yes. Members of the jury, disregard that. You took the envelope and you gave it to Judge Claiborne?

THE WITNESS: No, I did not. Mr. Claiborne came out, Jay Wright went into his office and was in there for five or ten minutes.

THE COURT: All right.

BY MR. RAGGIO:

Q Did you see or talk to Mr. Wright at any other time on that date to your recollection?

A Not that I recall.

Q Now, earlier on that day did you have occasion to fill out a deposit slip?

A Yes, I did.

Q Well, first of all, let me ask you this: Did you have occasion during that day to personally make a deposit at the First National Bank?

A To the best of my recollection, I did. It was the last day. It was also the last day of my employment. It was also the last day of the month and as the usual routine, I would have, particularly since it was the last day of my employment, I went to the bank and I made the final deposit so that the records would be accurate through the end of the month. Yes, I did.

Q And at this point in time, do you have any recollection of the amount of that deposit?

A No. If I saw it, I would recognize it.

Q At a time later in that day, did you have occasion to write out a deposit slip for that same bank account?

A Yes, I did.

Q And relate that to us, how that occurred?

A I was asked to make out --

MR. SHAW: Your Honor, I am going to object to that. It's got to be when she starts an answer, "I was asked to."

BY MR. RAGGIO:

Q Who was that conversation with?

A Judge Claiborne. He came to me and he --

THE COURT: He came to you and thereafter you wrote out a deposit slip?

THE WITNESS: I wrote out the deposit.

Thank you very much.

BY MR. RAGGIO:

Q Tell us what you did?

A I made out the deposit slip and I gave it to Judge Claiborne.

Q And was that in the same deposit book and on the same type of deposit slip that you had been describing here?

A Yes.

Q And what was the amount of the deposit that you indicated on the slip?

A $75,000.

Q And from whom did you obtain that information?

A I was given that information.

Q By whom?

A Judge Claiborne.

Q I am going to show you Government's Exhibit 33. May I approach the witness, your Honor?

THE COURT: Yes.

THE WITNESS: This is a very small item, but it appears to be a small microfilm.

MR. RAGGIO: You may use your glasses.

THE WITNESS: Thank you.

BY MR. RAGGIO:

Q Do you recognize that copy?

A Yes. That is my handwriting.

Q Is that the deposit slip that you made out on August 31st?

A I made out the front portion. I am not certain -- that is not my figures on the left side of this.

Q There is -- tell us what on that deposit slip, on the face of that deposit slip is in your handwriting?

A The date, 8/31/78 and the amount, $75,000.

Q Now, there are two amounts on there, if your Honor please, if I may show the Court. There is an amount here and also an amount here. I would like to show this to the jury through her so she can point out which is the one that she is referring to.

I know the jury can't see this, but will you indicate whether the $75,000 amount that you are testifying that is in your handwriting is on the left or the right of that deposit slip as it faces the jury. This would be the left and this would be the right.

A The left.

Q And is that the -- Does that appear to be in a black box?

A Yes.

Q A rectangle?

A Correct.

Q And that is in your handwriting?

A Yes.

Q This exhibit does not have the backside apparently on it.

To your knowledge, did you write anything on the back of the deposit slip?

A I don't think so, no.

Q After making out this deposit slip, what did you do with it?

A I gave it to Judge Claiborne.

Q And did you have anything to do with making this deposit actually going to the bank and going, making the deposit?

A No.

Q Do you know personally who did, if anybody?

A Judge Claiborne. He walked out the door with the deposit slip and I was relieved that I didn't have to carry that much to the bank.

Q Okay.

THE COURT: Did you write a receipt for that item?

THE WITNESS: I'm not certain, Judge. I haven't thought about that before. I don't remember. If I did, there would be a record of it.

THE COURT: Well, you said that all of the items and I realize this was the last day.

THE WITNESS: Uh-huh.

THE COURT: But your deposits were always reconciled with the receipt book.

THE WITNESS: They should have been, correct, but I don't remember that.

THE COURT: All right. Thank you.

/////

BY MR. RAGGIO:

Q Were you provided any information as to anyone as to the nature of this amount of money, the $75,000?

A No.

Q By Judge Claiborne or anyone else?

A No.

Q By Judge Claiborne or anyone else?

A No, I remember him asking for the deposit slip and I remember giving it to him, but I am not certain -- no, I don't recall that portion.

MR. RAGGIO: Nothing further, your Honor.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. SHAW:

Q Mrs. McElvain, in response to the Judge's question, did you tell the Judge that you never had thought before about the question of whether or not you wrote a receipt for that deposit?

A I was shown the deposit slip when two gentlemen came to the office before I was subpoenaed before the Grand Jury and showed me among the deposit -- showed me a variety of deposit slips, asking if that was in my handwriting.

None of those did I remember at that time.

Q Excuse me. Perhaps you misunderstood my question. Did you tell the Judge that you had never before thought about whether or not you had written a receipt in the receipt book for the $75,000?

A That's what I said, correct.

Q Now, you in fact have thought about that a great deal. In fact have testified to it a great deal, have you not?

A About the --

Q About whether or not you have written a receipt for that $75,000?

A Yes. Well, no, I have testified to the fact that I always wrote a receipt for every deposit. I have not testified on the receipt -- on doing a receipt for that $75,000.

Q You testified previously, have you not, that you have always written receipts for any amount of money that was deposited into that account?

A That was during the normal course of the business, correct.

Q And as part of that normal course, Judge Claiborne or Mr. Claiborne then, would have had to have told you the source of that in order for you to know how to fill out the receipt; is that right?

A I would have asked if I was not told, right.

Q Do you recall one of the times you have testified previously was in a Grand Jury in Portland, Oregon, in April

29th of 1982; is that correct?

A Yes.

Q And your memory probably was better then about these events than it is today, wasn't it?

A No, I am not certain that it would be because I had never been asked those questions before.

Q Were you asked these questions and did you give these answers in Portland, Oregon, in April of 1982, beginning on Page 21, Line 23:

> "Q Do you recall making any deposits that last day that you were in the office?
>
> "A No, I don't.
>
> "Q Do you recall going into the bank at all that day?
>
> "A I don't remember that last day. It was very hectic.
>
> "Q Well, you remember the day. You remember it as being hectic, right? So you have a memory of that last day.
>
> "A Just a vague memory.
>
> "Q What types of things were you doing that day?
>
> "A I couldn't answer that either.
>
> "Q You said people were running around

closing the office. What were you doing that was helping him close up the office?

"A I don't remember specific things on that last day.

"Q Moving furniture, putting stuff into his car or anything, telephoning or writing to clients?

"A There were a lot of phone calls, talking to people, still trying to locate people who had files in the office that might want them back.

"Q Did anyone else go to the bank that day?

"A I don't remember.

"Q Could Mr. Claiborne have gone to the bank that day?

"A I don't remember.

"Q Had somebody needed to go to the bank that day, would it have been you that would have gone in?

"A More than likely, but I don't remember going to the bank."

Do you remember giving those answers to those questions over a year ago?

A Now that you read them to me, yes.

Q And you gave those answers under oath just like you are today, did you not?

A That's correct.

Q Now you also testified, did you not, in approximately March of this year; is that correct, in this courtroom?

A Yes.

Q And you were under oath at that time as well, were you not?

A That's correct.

Q Do you recall giving these answers to these questions beginning on Page 456:

"Q Can you describe generally what was going on that made it hectic?"

Well, let me back up a few lines. On Page 456, beginning on Line 19:

"Q Now, you mentioned a moment ago that that last day, and also Judge Claiborne's last day in the office were rather hectic. You thought it was a rather hectic day; is that right?

"A Yes.

"Q Can you describe generally what was going on that made it hectic?

"A Not really. It's just a complete blur to me.

"Q Did you make any deposits that day?

"A I was shown deposits that I made. I did not remember making those until you showed them to me.

"Q Before we get to those, we are looking for your best present memory.

"A I just told you I don't remember.

"Q You don't recall making any deposits that day?

"A No."

Q Do you recall giving those answers to those questions under oath in roughly March of this year?

A Yes.

Q Well, also on March 19th of this year when you just said that you testified under oath, did you give this answer to this question on Page 463:

"Q Have you ever had a conversation with Mr. Claiborne, now Judge Claiborne, concerning the source of that $75,000 in cash?

"A I am positive that when he gave me the money that he told immediately who gave it to him or what it was given to him for and I wrote it down on the carbon copy. There was never a deposit made that the carbon copy did not indicate the source."

You gave that answer?

A Yes, that was my usual procedure.

Q And by "carbon copy" you meant a receipt; is that correct?

A Well, that would be, yes, of the deposit slip.

Q But were you referring to, in that last answer, were you not, to a receipt? In other words, you were positive you made out a receipt with a source on it?

A I was giving you my general procedure at that time.

Q Please answer the question. Are you referring to the receipt?

A Would you read that again please?

THE COURT: Read that last reference.

BY MR. SHAW:

Q "Q Have you ever had a conversation with Mr. Claiborne, now Judge Claiborne, concerning the source of that $75,000 in cash?

"A I am positive that when he gave me the money that he told immediately who gave it to him or what it was given

> to him for, and I wrote it down on the carbon copy. There was never a deposit made that the carbon copy did not indicate the source."

My question is, by "carbon copy", did you mean a receipt?

A No. I was referring to the carbon copy of the deposit slip.

Q You would write the source on the carbon copy of the deposit slip?

A Always.

I am not saying that the last day was a normal day and that I did that.

Q But then you don't remember the last day at all?

A No, that's not true, I do remember now.

Q Was it true before when you testified two times under oath and you didn't remember anything then?

A That was correct.

Q Now have you spoken with Judge Claiborne since March of 1984?

A Yes, I have.

Q How many times?

A Once.

Q Approximately when was that?

A This was the week before I came up -- a week ago.

Q Last week?

A Yes.

Q Was any of his attorneys with him?

A Yes. Oscar Goodman was.

Q Anyone else?

A No.

Q So it was the three of you; is that correct?

A That's correct.

Q Was that a briefing session that you had about your testimony?

A No, it was not.

Q Was it unlike the briefing session that you had during the, prior to your testimony in March?

A I never had a briefing.

Q Have you spoke to either Judge Claiborne or any of his attorneys since that occasion last week?

A No.

Q Have you spoken with any of them before that occasion last week?

A I saw Oscar Goodman on the street and I spoke to him, but not outside of that, no. I haven't seen either one of them.

Q Now, is it your testimony that this envelope that you had every month Jay Wright personally would come over to your office every single month and pick it up?

A No. That was the general rule. There might have been an occasion where Judge Claiborne might have taken it, but that was so rare. It was not the -- it was not the regular practice. The regular practice is that Jay Wright came by and picked this up. I always had it ready and it was always picked up.

Q Would you ever mail it or deliver it yourself?

A No.

Q Would he have other people pick it up on occasion?

A No. It would either be he or his wife.

Q Would you personally place the item into the envelope or would you on occasion just take the envelope from Judge Claiborne?

A I always personally put in the copies of the deposits and the receipts. The other items were things that either I put in or mostly it was Judge Claiborne, bills that he had paid.

Q Isn't it fair to say that in the earlier years of this procedure, there were a number of months where the receipts did not find their way to Mr. Wright's office?

A That's incorrect.

Q The receipts as well as the deposits were in there every month?

A Always. It never failed.

Q Did you ever receive calls from Jay Wright or Connie Wright, his secretary, trying to get you to send them the receipts?

A No.

THE COURT: Anything else, Mr. Shaw?

MR. SHAW: Request the Court's indulgence one moment.

THE WITNESS: May I say one thing?

THE COURT: No, ma'am.

THE WITNESS: No?

BY MR. SHAW:

Q Now, Mrs. McElwain, you, I presume, stopped giving Mr. Wright information concerning Judge Claiborne after you stopped working for Judge Claiborne; is that right?

A I had no information to give once I stopped.

Q Did you ever give him any information after you stopped working for Judge Claiborne?

A I don't recall that I did, no.

Q Did Mr. Wright or anyone from his office ever call you for information after you had stopped working for him?

A I don't recall that.

Q There is no reason to think he would have. I mean he knew you had left; is that right?

A That's correct.

Q And I take it your system of accounting that you have described related to just portions of the 1978 year and older years; is that right?

A That's not right. This system was in effect from the time I started until the time I left.

Q That's what I meant. Earlier years.

A Oh, yes.

Q Related to part of 1978 and earlier years.

A That's right.

Q Had nothing to do with 1979; is that right?

A My last day with Judge Claiborne was August 31, '78. That was the end of my keeping records for him.

Q So neither your records nor you personally have any information at all concerning legal fee income that Judge Claiborne received or may have received in either 1979 or 1980?

A No.

Q What was the last time that you saw the book of receipts?

A August 31, 1978.

Q And how about the deposits, the carbon copies of deposits?

A The same.

MR. SHAW: That's all. Thank you.

THE COURT: Any redirect?

MR. RAGGIO: Yes, your Honor.

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REDIRECT EXAMINATION

BY MR. RAGGIO:

Q With reference to Government's Exhibit 33, the deposit slip with the $75,000 indication on there, did you anywhere write on that slip any source or person from whom that apparently came?

A On this?

Q Yes.

A No.

Q Any indication of any kind on there?

A No.

Q Ms McElwain, you were asked about some previous testimony at the first trial and then at the Grand Jury.

Would you say your recollection on these items that you were asked about is better today than it was on those occasions?

A Yes, it is.

Q Why is it?

A Because at the end of the trial and I was questioned about the deposit slip on that particular day, and I was --

THE COURT: Wait. He asked you about the Grand Jury, did you not?

MR. RAGGIO: No, the first trial and the Grand Jury, your Honor.

THE COURT: I see, all right. The Grand Jury was a year before.

THE WITNESS: Those two times I testified truthfully as to the recollection I had at that time, but at the end of the trial, I was asked concerning Judge Claiborne asking me specifically for a receipt and it's always bothered me that I could not remember handling that $75,000 because this currency would always have to be counted before it was deposited. Before I would take it to the bank and it bothered me that I could not remember having that much money in my hand because on a large sum of money, you know how it is, you count it once, twice and maybe three times before you actually take it down to the bank.

It came to me after, after the trial was over that I did remember him asking me for the deposit slip and I know he did this. I know he took it to the bank and that I never had the money in my hands. That's why I didn't remember.

BY MR. RAGGIO:

Q And that's your present recollection?

A Yes.

Q Were you trying to explain something to Mr. Shaw?

A Yes, I was.

Q Would you tell us what that was?

THE COURT: Wait a minute. You have to ask a direct question. I am not going to turn the floor over to this lady. She has to answer your question.

MR. RAGGIO: My question was if she had omitted something in answer to Mr. Shaw.

THE COURT: Yes, I know, but, no, sir. You ask her a specific question, not what was in her mind. I don't know what she's going to bring forth. You don't know what she's going to bring forth. There is no opportunity to object.

BY MR. RAGGIO:

Q Was there any question you were asked by Mr. Shaw to which you gave an incorrect answer?

MR. SHAW: Objection.

MR. RAGGIO: I think that's a fair question, your Honor.

THE COURT: She may answer yes or no.

THE WITNESS: Would you ask the question once more.

BY MR. RAGGIO:

Q Was there any question that Mr. Shaw asked that you believe you gave any information that was incorrect?

A I would never lie.

MR. RAGGIO: I have nothing further, your Honor.

MR. SHAW: Nothing, your Honor. Thank you.

THE COURT: All right. Thank you.

(Whereupon the witness was excused.)

(Whereupon the next witness was duly sworn.)

JUDY AHLSTROM, DEFENSE WITNESS, SWORN

THE COURT: While we have met before, would you be good enough to give your name and spell your last name?

THE WITNESS: Judy Ahlstrom, A-h-l-s-t-r-o-m.

DIRECT EXAMINATION

BY MR. RAGGIO:

Q Mrs. Ahlstrom, where do you reside?

A I reside in Las Vegas -- well, Henderson, Nevada.

Q And what is your present position?

A I am secretary to Judge Claiborne.

Q For what period of time have you served as secretary to Judge Harry Claiborne?

A Almost six years. I went to work in December of 1978.

Q Was that several months after he assumed the bench?

A Three months after he assumed the bench.

Q And have you acted as secretary for Judge Harry Claiborne consistently from December of 1978 until the present time?

A Yes, I have.

Q And generally what are your duties as secretary?

A General secretarial work, phones, travel arrangements, travel vouchers, jury instructions, typing.

Q And in that connection, do you also keep any records pertaining to or prepare records pertaining to his function as a judge?

A Yes.

Q Where are -- Where is Judge Claiborne's chambers? Where is his office?

A In the Federal Building, Las Vegas, at 300 Las Vegas Boulevard South, third floor.

Q Was there a period of time initially when he was sitting here in Reno by direction?

A Yes. He spent part of his time in Reno and part in Las Vegas when I first went to work for him.

Q And more recently he has been in Las Vegas in the building which you have described?

A Yes.

Q Did you have occasion as his secretary to also do personal, handle personal matters for Judge Claiborne?

A Not too often. I deposited his check. Occasionally I would do little errands, mostly not in a personal end.

Q Do you know whether Judge Claiborne had a personal file in the office which he maintained and which was maintained for him?

A Well, yes, I maintained several personal files that were personal correspondence or financial information, various invitations and this type of thing that were just personal files.

Q So to that extent, you did handle some of that personally?

A Yes.

Q Where was this file physically?

A These files were in my office in one of the file cabinets.

Q And you have an office adjacent to the Judge's chambers?

A Yes.

Q And you were acting in this capacity during the month of April, 1980?

A That's correct.

Q Incidentally, do you know Jay Wright?

A I don't know -- I have talked to him on the phone several times. I don't know him.

Q And did you talk to him on the phone during the period of time that you had been serving as secretary for Judge Claiborne?

A Yes, many times.

Q Did you have occasion to talk to Mr. Wright during the month of April, 1980, do you know?

A Yes, sir, I am sure I did. He used to call quite frequently around that time.

Q I am going to direct your attention now to April the 10th of 1980 -- correction, April the 11th of 1980. Do you recall that date?

A Yes, I do.

Q Do you recall what day of the week that was?

A It was a Friday.

Q And where were you at that time on that date?

A At work.

Q Is that in the Federal Building in Las Vegas?

A Yes.

Q And did you have occasion to go to Mr. Wright's office on that day?

A Yes, I did.

Q Where was that office located on that day?

A It was located on South Commerce Street, et cetera, it would be south of Charleston. Right across the street from Home Lumber Company.

Q Why did you go to Mr. Wright's office?

A The Judge had asked me if I would mind --

MR. SHAW: Objection, your Honor.

THE COURT: Why did she go there?

MR. SHAW: She said the Judge had asked her. It certainly sounds like hearsay to me.

THE COURT: I think she's got a right to testify that she went there pursuant to the instructions of her boss.

THE WITNESS: I went over there to deliver some papers.

BY MR. RAGGIO:

Q And what did you deliver?

A I delivered a letter, a W-2 form and a check to Mr. Wright to file some sort of tax form.

Q I am going to show you Defendant's Exhibit 1 for identification which is a copy of a letter and ask you if you have ever seen the original of that letter?

A Yes. I took the original over to Mr. Wright's office.

Q And do you recognize the handwriting on that letter?

A Yes, sir.

Q Whose handwriting is that?

A Judge Claiborne's.

Q Is that letter other than the printed letterhead entirely, to your knowledge, in the handwriting of Judge Claiborne?

A Yes. Yes, sir.

Q And does that include the date and the signature?

A Yes, sir.

Q And when did you first see the original of that letter?

A On the morning of the 11th.

Q Tell us the circumstances under which you first saw that letter, the original?

A Judge Claiborne asked, handed it to me along with the check and asked me --

MR. SHAW: Objection, your Honor.

MR. RAGGIO: I don't think she finished, your Honor.

THE COURT: Well, I think at this point we will have to sustain the objection.

MR. RAGGIO: I don't know what the objection is to, your Honor. She had started to say she --

THE COURT: Hearsay.

MR. RAGGIO: Is the objection to my question. I don't see how he can object to my question.

THE COURT: She said "Judge Claiborne told me." That's hearsay. She got to the point where Judge Claiborne told me. I cannot permit that under the rules at the present time.

BY MR. RAGGIO:

Q Without relating what Judge Claiborne told you, since that's his Honor's ruling, tell us how you came to get the letter and what was with it and what you did with it?

A I was given a letter and a check.

Q Who gave you the letter and the check?

A Judge Claiborne.

Q Directly?

A Yes, sir. I pulled the W-2 form out of his financial, personal financial file in my office.

Q The W-2 form being for what?

A For the calendar year 1979.

Q Was that his salary as a federal judge?

A From the Government, yes, sir.

Q All right.

A I copied the letter. I put all three together in the envelope, the original, the check and the W-2, the part of the W-2 form that the accountant needed, and took it over to Mr. Wright's office.

Q Did I understand you to say you took these three items, the letter, a copy of the W-2 form and the check?

A Correct.

Q You put them where?

MR. SHAW: I objection to Mr. Raggio's continuing to repeat every answer. They are simple, clear answers.

THE COURT: Objection sustained.

BY MR. RAGGIO:

Q Where did you put these items?

A I put -- I put them in an envelope and I drove over to Mr. Wright's office and took them into Mr. Wright's office.

Q You did that personally?

A I personally did that, yes, sir.

Q Do you recall -- you said you made a copy of this letter. Why did you make a copy of the letter?

A I just always made copies of everything that I am taking out or sending out. It's just my practice.

Q Do you recall the amount of the check?

A Yes. The check was $8,000.

Q Do you recall anything else about the check? Who made it, who was the payee?

A Judge Claiborne made it. It was made out to the Internal Revenue Service.

Q And what did you do with the items in the envelope or the envelope when you went to Mr. Wright's office?

A I took it in and I took it over to his secretary or the bookkeeper, and handed it to --

Q Do you have a recollection as to who you gave it to in that office?

A I believe it was his wife. At the time I didn't know that, but the girl in the front office I had told her I had something for Mr. Wright from Judge Claiborne and she just directed me over to this older woman that was sitting over to the right as I walked in.

Q And did you know who Mrs. Wright was at that time?

A No, sir, I did not.

Q Have you seen her since, had occasion to see her since?

A I saw her up here yesterday.

Q What is your recollection at this time as to who you gave the envelope to?

A I am quite certain it was Mrs. Wright.

Q Now, is that the copy of the letter that you have in front of you, Defendant's 1, marked for identification, identical in all respects to the original letter which you delivered, which you received from Judge Claiborne on that date and delivered to Mrs. or Mr. Wright's office on that date?

A Yes, sir. Except for the sticker up at the top.

Q What is that?

A Defendant's Exhibit No. 1.

Q Oh, all right. Except for the exhibit number.

A Yes, sir.

MR. RAGGIO: We will offer Defendant's Exhibit 1 in evidence, your Honor.

MR. SHAW: Objection, your Honor.

THE COURT: Can you identify the handwriting of Judge Claiborne?

THE WITNESS: Yes, sir, I can.

THE COURT: Is that in his handwriting?

THE WITNESS: Yes, sir, it is.

MR. SHAW: May we argue outside the jury, your Honor. There is a different basis for my objection. I would like to argue outside the jury if we may.

THE COURT: All right, members of the jury, I guess it's time for you to take a break anyway.

(The following proceedings were held in open court out of the presence of the jury.)

MR. SHAW: Your Honor, could the witness be excused during this argument?

THE COURT: Yes. You may step out if you will, please.

(Whereupon the witness was excused.)

THE COURT: I suppose everybody will run and tell her what you said. I don't know why the big secrets.

MR. SHAW: Dilutes it a little bit.

The one is the hearsay objection because we don't have any foundation that she was the one who maintained this particular copy in the usual course of business. I assume that's the exception they would offer it under. If there is a different exception, I will address that if the argument is made by the defense. The other objection is under Rule 1003 which is, regards the admissibility of duplicates. Duplicates are, of course, admissible in the absence of an original, but only if there is not a genuine question raised as to the authenticity of the original.

Obviously we don't have the original being offered.

We don't know that this is even the first layer of copy. This may be some 42nd level of copy. There has just been no foundation at all. It is the obligation of the defense to make that foundation.

THE COURT: On your basis of that, of course, it has some merit because apparently the Government does question the authenticity of that letter. But that means that any time any question has arisen, how are you ever going to get in that copy?

MR. SHAW: Well, if she had testified for example that at Judge Claiborne's direction she had retrieved it from the file that she maintained and --

THE COURT: Well, you wouldn't let her testify to that.

MR. SHAW: For the voir dire portion of the admissibility, we could do that outside of the hearing of the jury, but we don't have that. In fact, she testified to the opposite during the last trial. She had never seen this thing before her briefing session with Oscar Goodman and Judge Claiborne, I don't mean other than Jay Wright's time. Between the time she said she gave the original to Jay Wright.

THE COURT: Give me the testimony that she previously testified to and let's see what changes if any she has now devised.

Of course, the difficulty is Mr. Wright says that at the present time he has no recollection of ever having seen that letter. There is no evidence that any materials were lost or destroyed from Wright's office, but it is possible that could have occurred. I invited Mr. Johnston to ask the question. He paid no attention to me on that, and he could have followed it through, but he never asked Mr. Wright. But how in the world -- Wright of course said he assumed that he had received it and then it came in evidence, and now he says, "Well, I have no recollection of having received it," and your contention is when he admits that he previously at the trial, first trial said, yes, he had assumed he had received it, your contention is that you can't get this copy in.

I don't think Rule 1002 goes that far.

MR. SHAW: Your Honor, you have got to have somebody to say it was maintained in the usual course of business. This is some document that is being shown to her on the stand that it appears to her to be a duplicate.

THE COURT: She said she made a copy because she makes a copy of everything.

MR. SHAW: But she doesn't know that this is that copy. She didn't testify if this was a copy she made.

THE COURT: I thought she did say that.

MR. SHAW: She said she made a copy and she said this appears to be a copy of the original.

THE COURT: That's a technicality. We can recall her right now and you may ask her whether that's the copy she made.

MR. SHAW: I would be happy to ask her that line of questioning, because I know what her answer is going to be.

THE COURT: I would assume so too.

All right. Let Mrs. Ahlstrom back in.

Call the jury.

MR. SHAW: Can we do the admissibility issue outside the jury first, your Honor?

THE COURT: All right. Let's hear from her first. Go ahead, Mr. Shaw.

JUDY AHLSTROM, DEFENSE WITNESS, PREVIOUSLY SWORN

VOIR DIRE EXAMINATION

BY MR. SHAW:

Q Now, in your normal business practice, do you indicate in any way on the copies that you make of Judge Claiborne's work that you were the person who made the copy?

A No.

Q You don't initial it in any way?

A No.

Q Is there any way that you can tell by looking at a copy that it was a copy that you had made or whether it was a third or fourth generation copy?

A It's a copy of a document I made, you know.

Q Is this the exact piece of paper that came out of that copying machine? You are not telling us that, are you?

A I think somebody else could have possibly copied my copy.

Q Please answer my question. Are you able to say whether Defense Exhibit No. 1 is the exact piece of paper that came out of the copying machine on April 11th, 1980?

A No, sir, I couldn't.

Q Since delivering that original to Mr. Wright, have you ever seen the original again?

A No, I haven't.

Q Since delivering the original to Mr. Wright, when was the next time that you saw a copy of Defense Exhibit No. 1?

A After the indictment came down last year.

Q And that was shown to you by whom?

A I believe it was Mr. Goodman, Mr. Raggio.

Q And Judge Claiborne?

A Judge Claiborne was in there, yes.

Q And they had it already in their hands at the time you came into the room; is that right?

A Yes.

Q They didn't ask you to retrieve it for them or or anything?

A No.

Q They already had it?

A Yes.

THE COURT: How do you remember after five years the precise language of a particular document that you say you made a copy of?

THE WITNESS: I don't know. He put the thing in front of me and that is the document I copied. I mean if you had asked me to tell you, read it to you or tell you what was in it, I could not have told you.

THE COURT: You make copies of lots of things, don't you?

THE WITNESS: Yes, sir, I make copies of everything.

THE COURT: Well, how come you remember by reading the language in the copy of the letter that you were shown after the indictment came down that this is the copy of the letter that you made?

THE WITNESS: Because I only made a copy of one letter of that kind. That's the only letter I made a copy of and had taken over to Mr. Wright.

THE COURT: You keep copies in what file?

THE WITNESS: I keep the copies in the file in my office.

THE COURT: Well, what file would you have placed this copy in?

THE WITNESS: It's called -- well, I have a bunch of files that are marked personal at the top and this one says financial.

THE COURT: Had you made a copy of the original of this letter, where would you have placed that file?

THE WITNESS: I would have placed it in the financial file in the filing cabinet in with all the rest of his personal files that I have maintained.

THE COURT: Did you ever see the copy in that financial file after you say you made the copy?

THE WITNESS: I don't remember looking for it. No, I could not say that I specifically saw it in the file after I put it in there.

THE COURT: When it was shown to you after the indictment was returned, were you asked to go to that file and get it?

THE WITNESS: No, sir. They had it.

THE COURT: They had it.

I sustain the objection. Anything further you have of this witness?

MR. SHAW: I don't know if the defense was through with this witness yet.

THE COURT: Anything further?

MR. RAGGIO: Not in view of your ruling, your Honor.

THE COURT: All right. Can you show me how I can let it in under Rule 1001(3), which says, "An original of a writing or recording is a writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print thereof. If data are stored in a computer or similar place, any printout or other output readable by sight shown to reflect the data accurately is an original."

Then it says, "A duplicate is the counterpart and so obtained by recordings," and so on, "and it can be introduced. The duplicate can upon, under 1001 -- beg your pardon -- under 1002 to prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in these rules or by act of Congress and as to 1003 it says, "A duplicate is admissible to the same extent as an original, unless: (1) A genuine question is raised as to the authenticity of the original, or (2) In the circumstances it would be unfair to admit the duplicate in lieu of the original."

As far as this lady's testimony is concerned, she has a recollection of making a copy because she makes a copy of everything. She files it in the financial file. She has not seen it in the financial file since she put it in there, assuming she did put it in there. She was not asked to get it out of that file, and she has no independent recollection of the wording of the original, and knows nothing about it except she was presented with the copy after the indictment was returned.

MR. GOODMAN: May I be heard?

THE COURT: Yes.

MR. GOODMAN: Mrs. Ahlstrom testified that the particular document which she is identifying, Defendant's 1 for identification was a document which she copied. That she recognizes that.

THE COURT: I have heard the testimony.

MR. GOODMAN: She recognizes it as being one that she copied. The testimony from Mr. Wright was that he said that he doesn't have it. The testimony from Mrs. Ahlstrom says she delivered the original. I would ask the Court to look at Rule 1004 and based on Rule 1004 and not 1003, permit the document to be admitted into evidence because the original is not a record and other evidence of the contents of a writing, recording or photograph is admissible if one original is lost or destroyed or unelss the proponent lost it and we did not lose it. Mr. Wright lost it is our theory.

THE COURT: You may have some argument along that line. Let's hear from you on 1004, Mr. Shaw.

MR. SHAW: Your Honor, even assuming the applicability of 1004, which we would not concede, we have no testimony that this is even the best evidence that the defense has available. There is no testimony that this is the original copy. If we had testimony that this was the original copy, then perhaps the defense could make an argument that the original was lost.

THE COURT: In due time her testimony may be admissible, but it depends upon whether anyone can identify the precise language in the copies as being a copy of the original.

MR. SHAW: We need the person who retrieved it from the file.

THE COURT: Yes, I understand that.

MR. SHAW: Furthermore, the testimony of this witness in the prior occasion she testified that she either put it in the personal file or gave it to Judge Claiborne. She has no memory of which of those two events, and she was just testifying from her normal business practice.

THE COURT: I will still adhere to my ruling and at the appropriate time Miss Ahlstrom can be recalled if necessary.

Will there be any further questions of this lady at this time?

MR. RAGGIO: I have an additional question, your Honor.

THE COURT: Any further questions by you before the jury, Mr. Shaw?

MR. SHAW: Yes, I would have some cross-examination once the jury comes in.

THE COURT: All right, we will take about a five-minute break and then call the jury.

(Whereupon a recess was taken.)

THE COURT: Mr. Goodman, I sent the marshal out with instructions to let no one talk to Mrs. Ahlstrom during the brief recess.

MR. GOODMAN: Yes, your Honor, and because of the instruction of course we followed it, but it also causes me to move for a mistrial.

THE COURT: Denied.

MR. GOODMAN: I would like the record --

THE COURT: The witnesses were sequested for a particular reason.

MR. GOODMAN: Well, it seems it only works against us, Judge.

THE COURT: No, no. no.

MR. GOODMAN: Because when the witnesses leave here, it's all right for them to talk to them.

THE COURT: I haven't had reports to me about anybody during recesses talking to anyone.

MR. GOODMAN: They talk every time there is a break with their witnesses.

THE COURT: This lady was a key witness on an important point. I ruled.

MR. GOODMAN: I would like the record to reflect and I will abide by the Court's ruling, but it's our position that we take this as far as the defense is concerned as a personal assertion towards defense because it's the first time this rule has been invoked during this trial.

THE COURT: Mr. Goodman, I don't want to cite you for contempt. I have made many rulings in this case favorable to Judge Claiborne. Have a seat, sir.

Call the jury, Mr. Marshal.

(Whereupon the following proceedings were held in open court before the jury.)

THE COURT: All right. Mr. Shaw, you had nothing further? Or whoever was questioning?

MR. RAGGIO: Your Honor, I was questioning this witness.

THE COURT: I beg your pardon. Go ahead.

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DIRECT EXAMINATION (Resumed)

BY MR. RAGGIO:

Q Mrs. Ahlstrom, other than the occasion that you have testified to when you went to Mr. Wright's office with the envelope that you have described and the contents, did you have any other occasion to go to Mr. Wright's office?

A Yes, sir. One other time.

Q What was that -- when was that, if you recall?

A I am not really sure. It would have been in probably '79 or '80, but I am really not sure.

Q What was the reason for your going to his office at that time?

A I picked up copies of bank statements from the bank and delivered them to Mr. Wright's office.

Q Do you know the reason that you did that?

A I assume because he needed them.

Q Why did you take them there?

A Well, I believe that the office had misplaced them and they needed copies of them.

Q Mr. Wright's office?

A Yes, sir.

MR. RAGGIO: Thank you.

THE COURT: Cross-examine.

MR. SHAW: Thank you, your Honor.

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CROSS-EXAMINATION

BY MR. SHAW:

Q Mrs. Ahlstrom, you have testified that this errand that you did for Judge Claiborne was on Friday; is that right?

A That's correct.

Q What is it you remember about that as being a Friday?

A I remember it being a Friday because the Judge was very busy getting things completed because he was going out of town.

Q And he only goes out of town on Fridays?

A No, but the letter was April 11th, which was a Friday and I don't work on Saturdays normally and I did not work on that Saturday.

Q Since you testified last time, you have looked up to see what day of the week it was?

A Yes, sir, I did.

Q It has nothing to do with your present recollection?

A I did not know it was Friday at the last trial, you are right.

Q You don't know it's a Friday at this trial other than what you looked it up?

A I did look at a calendar and it is a Friday.

Q Was Judge Claiborne in court that day?

A No, sir, he wasn't.

Q What was he doing that morning?

A He was clearing up matters in the office that had to be finished before he went out of town. He was preparing to go to the Ninth Circuit Court of Appeals.

Q Is that something that Judge Claiborne has told you about since the last time you testified?

A No, sir, it isn't. I looked on our calendar and he was to be in San Francisco on the 14th and he had bench memos for various cases that needed hearing.

Q So you are just repeating something you read in the office; is that right?

A No. I looked at the calendar to see what the date was and at that point I saw that he was going -- that he was at the Ninth Circuit on the 14th.

Q But you don't remember that independently of what you wrote down?

A No. I looked at the calendar.

Q Now, you have testified that you carried this material over to Mr. Wright's office in an envelope?

A Yes, sir.

Q That's your normal procedure for the few occasions you make deliveries; is that right?

A Yes, sir.

Q So you are testifying from your usual procedure, not your independent recollection; is that fair?

A Anything that I would not particularly want a receptionist or someone that it was none of their business to see, I would put it in a sealed envelope, yes, sir.

Q You are talking about your usual business practice; is that right?

A That's correct.

Q You don't remember that you put it in an envelope?

A I did put it in an envelope, yes, sir.

Q Do you remember putting it in an envelope?

A Yes.

Q Do you remember testifying about that matter in March of this year?

A Yes, I do.

Q Do you recall when I asked you this question on Page 1552, Line 7:

> "Q Before we get to the assumptions, do you remember whether it was in an envelope or not?
>
> "A No."

Did you give that answer to that question?

A I suppose I probably did because you are asking me what size envelope and was it sealed and -- my original answer was that I put it in an envelope and took it over, and after you kept harping on the subject, I was getting rattled. I still say I put it in the envelope which was my original answer.

Q Now, I don't mean to harp, Mrs. Ahlstrom. I am trying to find out the difference between what you remember and what you assume.

A I put it in an envelope. I am quite certain of that.

Q So when you testified previously that you were only assuming, that you were incorrect at that time; is that right?

MR. RAGGIO: Excuse me, your Honor, that's objectionable as being argumentative. There is no conflict between assuming it and saying so at this time.

THE COURT: Well, her prior testimony has been read, I take it, and her present testimony has been heard by the jury. So I don't think that she has to answer that.

MR. SHAW: Very well, your Honor.

THE COURT: Unless she wishes to make a further comment or correction.

BY MR. SHAW:

Q Do you wish to make a further comment?

A No.

Q Now, you made the copy in your usual course of business in chambers; is that right? Is there a copy machine?

A There is a copy machine in the hallway right outside the chambers, yes.

Q And that's the machine you used?

A Yes, it is.

Q That's the machine you would always use in the usual course of business; is that right?

A Yes, unless it wasn't working, then I would go to the Clerk's Office.

Q But you remember it working on this occasion?

A Yes.

Q And what did you do with the copy?

A I put it in the financial file in my office in the filing cabinet.

Q And do you remember doing that?

A Yes, I do.

Q Do you remember testifying in March of this year as follows on Page 1543:

> "Q How many copies did you make?
>
> "A One.
>
> "Q What happened to that copy?
>
> "A Generally if it's personal stuff, I give it back to --
>
> "Q Before we get to generally, what did you do with that copy?
>
> "A I assume I gave it back to him, or stuck it in his financial file.
>
> "Q Before we get to assumptions, what

did you do with that copy, do you
remember?

"A I don't remember exactly. I did one of those two things with it. I didn't keep most of his personal financial stuff unless it was something that I thought that we needed to have around and might get misplaced. I just copied it and dumped it in his personal file."

Now, are you saying that you remember which of those two things you previously said that you exactly did do with it?

A I am quite certain that I put it in his personal financial file.

Q You could not have given it back to him directly?

A Not unless he asked me to give it back to him. I would have put it in the file.

Q Did he ask you to give it back to him?

A No, sir, he didn't.

Q Is there anything that happened between March of this year and today that makes you remember now that it was in the personal file as opposed to giving it back to him?

A Well, yes. He didn't ask me to make a copy. I made that on my own as a general practice.

Q But you -- I am sorry, go ahead. Was that the end of your answer?

A Yes.

Q You knew that last time you testified, didn't you?

A That's correct.

Q And you testified last time that you only did one of two things with it, either put it in the personal file or gave it back to him. My question is what happened since then that has now refreshed your memory as to what you did with it?

A Because he did not specifically ask me to make a copy, I am positive I put it in his file. If he asks me to make a copy of it, I hand it to him. He specifically did not ask me to make a copy.

Q Is it fair to say that all of your testimony is based upon assumptions that you were reaching from your normal business practice?

A No, that isn't fair to assume. It's assumptions.

Q You remember it being April 11th, 1980, because the letter they showed you said April 11th, 1980, on it; is that right?

A That and -- yes. That and the fact that it was getting close to tax time. It was a Friday. I don't work on weekends. If you remember the last time, I said it could have been the day after, when I did not know what day it was. It couldn't have been the day after because that was Saturday.

Q You don't know that independently. You know the day after was Saturday. You know that because you looked up some calendar since you testified last; is that right?

A Yes, sir, I did.

Q Now do you normally read Judge Claiborne's personal financial matters when you make copies for him as part of being his confidential secretary?

A I don't -- I read -- yes, when I am copying, generally I will read it particularly if I am attaching things to it to see if I have got what all I need.

Q So you read this as you were copying it?

A As I was copying it or as I was --

Q Or at any time?

A Yes, I did read it.

Q Now, you would on occasion receive calls, would you not, from Jay Wright where you were seeking some tax information from Judge Claiborne?

A Yes, sir, I did.

Q And you would pass those messages along to Judge Claiborne, would you not?

A Yes.

Q And Judge Claiborne would then get back together with Mr. Wright?

A Yes.

Q Now, did there come a time in 1981, perhaps the spring of 1981, when Mr. Wright started leaving messages for Judge Claiborne to call so they could get together and start on the 1980 return?

MR. RAGGIO: Objection, your Honor, the year is 1981. It would be irrelevant.

MR. SHAW: Well, it's 1981 is the preparation of the 1980 return.

THE COURT: I will permit it.

THE WITNESS: Yes, I believe he did call.

BY MR. SHAW:

Q How many times did Mr. Wright call leaving messages for Judge Claiborne to call him back?

A Several.

Q More than five?

A I know it was more than two or three.

Q Do you know of your own knowledge whether Judge Claiborne ever returned any of those calls?

A No, I don't know.

Q But you did deliver those messages to Judge Claiborne?

A I believe I did.

Q Is there any reason that you would not deliver a message to Judge Claiborne that his accountant was asking you to deliver?

A Yes. If I had given him a few messages and he knew that they needed to talk to him, and they kept calling, I might not keep throwing the messages in on his desk, yes.

Q You as a secretary would take it upon yourself to throw away messages and not tell your employer about them? You are not telling us that, are you, Mrs. Ahlstrom?

A Yes, I have done that before.

Q But Judge Claiborne got a number of messages from you anyway?

A Yes.

Q Where Jay Wright had wanted him to call him?

A Yes, sir.

Q And the purpose of those messages were to begin the process of preparing the 1980 tax return, were they not?

A I don't know. He didn't tell me.

Q Since delivering what you say is this letter to Mr. Wright on April 11th, 1980, did you ever again see the original of that letter?

A No, I haven't.

Q To this day you haven't seen the original, have you?

A No, I haven't.

Q Now, after February 11th, 1980, when did you first see the copy -- after April 11th, 1980, when did you again see a copy of that letter?

A After the indictment came down last December.

Q So for perhaps what, three and a half years, you had not seen that copy; is that correct?

A Yes, as far as I know. I had no reason to look for it.

Q After the indictment last December, where were you when you saw that copy?

A In chambers.

Q In Judge Claiborne's chambers?

A Yes, sir.

Q Was anyone else present?

A Yes, sir.

Q Who else?

A Mr. Raggio and Mr. Goodman.

Q Anyone else?

A Judge Claiborne.

Q And they showed you the letter at that time; is that correct?

A Yes.

Q They had it in their possession already?

A (No response.)

Q They didn't ask you to retrieve it for them?

A That's correct.

Q Do you recall who it was that had it in their hand when you first saw it?

A I believe Mr. Goodman handed it to me.

MR. SHAW: That's all we have. Thank you.

Wait a minute. One other question. I am sorry, your Honor.

BY MR. SHAW:

Q Directing your attention to Government's Exhibit No. 40, which I believe is in evidence as the 1979 Ethics in Government filing, did you type that for Judge Claiborne?

A Yes, sir.

Q Is that his signature at the bottom of Page 2?

A Yes, it is.

Q Would you have typed that for him on or about the date that he signed it?

A Yes, sir.

Q Do you recall mailing it into the Judicial Ethics Committee?

A (No response.)

Q At his direction?

A I mailed it in, yes.

Q Did he give you the information from which to type that up?

A Yes, sir.

Q He had written out a work sheet and given you all the information that you needed to type it up; is that right?

A Yes, sir.

MR. SHAW: Okay. Thank you.

THE COURT: All right, Mr. Raggio.

REDIRECT EXAMINATION

BY MR. RAGGIO:

Q Mrs. Ahlstrom, with reference to the letter dated April 11th, 1980, would you or did you have any reason at all to look for that letter between the date of April 11th until the date when the indictment had been returned?

A No reason at all.

Q And Mr. Shaw has asked you about copying that letter on your machine. The copy that's in front of you, you don't know whether or not that's the first copy that was made, I assume, do you?

A I don't have it in front of me.

Q Excuse me.

My question was, you don't know whether that particular xerox copy is the first copy of the original letter that was made, I assume, do you?

A No, sir, I wouldn't know.

Q I want to ask you now, is that letter and I think you said you read the letter?

A Yes, sir.

Q And is that letter an exact reproduction of the original letter that you saw and read on April 11th, 1980?

A Yes, it is.

Q In all respects?

A In all respects.

THE COURT: Is that what you told me a few moments ago?

THE WITNESS: I don't remember you asking me that specific question, your Honor.

THE COURT: All right. Go ahead.

MR. RAGGIO: I will offer the exhibit, your Honor.

MR. SHAW: I would object and I have further questions in line of that question.

THE COURT: All right. You may question first.

VOIR DIRE EXAMINATION

BY MR. SHAW:

Q You don't have any memory today, your own independent memory, do you, of the wording of this letter as being the same as what was on the original?

A Yes, it is the same letter.

Q You remember the wording on this letter from having seen the original in 1980 four years ago?

A After having seen it again recently, yes, I recognize it.

Q You recognize it because it says Harry E. Claiborne at the top and you know that's his letterhead?

A It was his letterhead from his old law office, yes.

Q And it says April 11th, 1980, at the top so you assume that that means that it was written on April 11th, 1980; is that right?

A You keep saying "I assume." I know that that is the letter.

Q But you know that it's April 11th, 1980 only because it says that on the letter. You don't remember April 11th, 1980?

A I wouldn't have remembered it was April 11th, 1980, no.

Q You don't remember the dollar amount that's listed in the letter independently of the letter itself, do you?

A (No response.)

Q You don't have any memory of it?

A I remember the $8,000 check. I remember the $11,000 airplane thing because I got the, the information on the airplane sale -- I found a form in his personal files and gave it to him.

Q Do you remember any other figures on this letter?

A (No response.)

Q Independently from four years ago, not from looking at it a minute ago.

MR. RAGGIO: Excuse me, your Honor, that would be improper. She -- the question is, does she remember?

THE COURT: I didn't even hear the question.

MR. SHAW: The question was whether she remembers independently from four years ago when she saw the original that the figures in this copy are the same figures that were in the original.

THE COURT: That's permissible.

THE WITNESS: I am really confused. If you are asking me if four years ago you brought that letter out and didn't show it to me, would I remember all those figures, even though I knew about the letter, I probably wouldn't remember all those figures.

BY MR. SHAW:

Q Not only four years ago, you testified last March only that all you remembered, that you remembered the $8,000 check and all you remembered about the other dollar figure was that it was something larger than $8,000; isn't that correct?

A That's what I testified, yes.

Q And that's what your present recollection is, is it not?

A No, my present recollection is better because I have seen the letter since then.

Q But you saw the letter last time you testified?

A The day before I saw it.

Q When did you see this copy before today?

A I saw it today.

Q Before you testified?

A Yes, sir.

Q And again while you were on the witness stand?

A Yes, sir.

Q So you remember another figure on there based upon having looked at that copy, not based upon your knowledge that it's the same as the original?

A It's the same letter so I -- the figure has to be the same.

Q Well, if it has been altered, you would have no way of knowing that. You would have no way of knowing that because you don't remember that figure, isn't that correct?

A I don't believe it's been altered.

Q Had it been altered, you wouldn't know, you wouldn't be able to see that because you don't remember this dollar figure being on here from the original, do you?

A I don't know. You're --

Q Have you completed your answer?

A Yeah, I have completed it.

THE COURT: Anything further of this witness?

MR. RAGGIO: Yes, I have an additional question, your Honor.

REDIRECT EXAMINATION (Resumed)

BY MR. RAGGIO:

Q Mrs. Ahlstrom, is that the same letter that you saw on

April 11th, 1980, in all respects?

A Yes, sir.

MR. SHAW: Objection.

THE COURT: Sustained. We have been through this. The Court will defer ruling on the admissibility of the exhibit in question, Defendant's Exhibit 1 for the present.

Thank you, Ms Ahlstrom. You may be excused.

(Whereupon the witness was excused.)

THE COURT: Who is our next witness, gentlemen?

(Whereupon the next witness was duly sworn.)

GEORGE MICHAEL DUCKWORTH, DEFENSE WITNESS, SWORN

THE COURT: Please give your full name, sir, and spell your last name.

THE WITNESS: George Michael Duckworth. D-u-c-k-w-o-r-t-h.

DIRECT EXAMINATION

BY MR. GOODMAN:

Q Mr. Duckworth, where do you reside?

A Las Vegas.

Q How are you employed?

A I am president of the Dunes Hotel.

Q Where is the Dunes Hotel located?

A 3650 Las Vegas Boulevard South.

Q How long have you been associated with the Dunes Hotel?

A About 23 years.

Q Is the Dunes Hotel located in Las Vegas?

A Yes, it is.

Q Do you know Harry Claiborne?

A Yes, sir, I do.

Q When did you first meet Harry Claiborne?

A Oh, probably some time in the early '50's, maybe '53, '54, '55, right in through there.

Q Do you see him in the courtroom?

A Yes, sir.

Q Would you please point him out to the ladies and gentlemen of the jury?

A Mr. Claiborne is seated at the table there in the center of the three gentlemen.

Q Now, what are your duties and responsibilities as president of the Dunes Hotel and Casino?

A Basically I attend to casino affairs.

Q How long have you been president?

A Little over two years.

Q What has your relationship been with Judge Claiborne since you met him?

A Judge Claiborne and I have become very good friends over a number of years.

Q Is it a professional relationship or social relationship or both?

A Both.

Q Now, did you know a gentleman by the name of Sidney Wyman?

A Yes, sir.

Q Who was Sid Wyman?

A Sidney Wyman for a period of time was the chief operating executive officer of the Dunes Hotel.

Q And what were his duties and responsibilities at that time?

A He was the chief operating officer and directed mostly to casino affairs at that time.

Q Is Mr. Wyman alive today?

A He's deceased as of 1978, I believe.

Q Do you know at the time of the last year of his life, let's say from 1970 up until the time that he passed away, where Mr. Wyman resided?

A He resided in the Dunes Hotel.

Q He actually lived at the Dunes Hotel?

A Yes, sir, he did.

Q And what type of a room?

A He had a two bedroom suite on the fifth floor of the hotel.

Q And he resided there on a full-time basis?

A Yes.

Q Did you have occasion to visit with him in his room?

A Yes, many times.

Q How many times?

A Maybe a hundred times or more.

Q How often would you see Mr. Wyman, let's say around the period of time of 1972, on a daily or a weekly basis?

A Three, four, five times a day at least.

Q And during the period of time around 1971, '72, did you have the occasion to see Harry Claiborne in the company of Sid Wyman?

A Yes, sir, I did.

Q And how often would you say during that period of time around '71 and '72 did you see Judge Claiborne who was then Attorney Claiborne with Sid Wyman?

A Very often.

Q Did there come a time when Judge Claiborne was representing persons associated with the Dunes Hotel as far as a trial of the case?

A Yes.

Q And are you able to tell us when that trial took place?

A I believe the trial took place in the fall of 1972.

Q Could you tell us where the trial took place?

A In this building.

Q Was Mr. Wyman one of the defendants in the case?

A Yes, sir.

Q Was Judge Claiborne, then Attorney Claiborne, an attorney in the case?

A Yes, sir, he was.

Q Do you know whether or not Harry Claiborne represented Sid Wyman in that litigation?

A Specifically I can't be sure. I would assume it was either Judge Claiborne or Mr. Marshender, one of the two.

Q Do you know whether or not Judge Claiborne, then Attorney Claiborne, actively participated during the trial of the case?

A Yes, sir, he did.

Q And are you able to tell the ladies and gentlemen of the jury how the case turned out?

A Mr. Wyman was found not guilty.

Q Now, did there come a time that you had the occasion to be with Sid Wyman around Christmas of 1972 in his suite?

A Yes. There was such an occasion.

Q Was anybody else with you?

A Mr. Arthuer Selman.

Q And did anything take place while you and Mr. Selman and Sid Wyman were at the Dunes Hotel and Mr. Wyman's suite?

A During the course of a conversation, the telephone rang and it was Judge Claiborne and Mr. Wyman invited him to join us in his suite.

Q At some later point in time on that particular occasion, did Judge Claiborne appear?

A Yes, he did.

Q And when Judge Claiborne came to the suite, was Mr. Wyman, Mr. Selman and yourself present in the suite?

A Yes, we were.

Q Would you tell the ladies and gentlemen of the jury what then happened?

A Judge Claiborne entered the room and there was a greeting between the Judge, Mr. Wyman, Mr. Selman and myself, and a conversation ensued and after a minute or two, Mr. Wyman said to Judge Claiborne --

MR. HENDRICKS: Objection, your Honor, hearsay. I ask to be heard outside the presence of the jury.

MR. GOODMAN: Your Honor, if it please the Court, I have given notice.

THE COURT: I know you have given notice.

MR. HENDRICKS: That doesn't dispose of the issue, your Honor. We have further argument to be made on the matter.

THE COURT: I am going to let the testimony in. I think that it should be liberally construed to the dead person statute providing there is an appropriate notice that has been given. The notice has been given.

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BY MR. GOODMAN:

Q Mr. Duckworth, would you please tell the ladies and gentlemen of the jury what took place?

A During the course of the conversation, Mr. Wyman said, "Harry, I have a Christmas present for you," and took a box from a table which was adjacent to a sofa he was sitting on, and he handed the box to Judge Claiborne and he said, "This is for you. It's a gift from me to you and I want to wish you a Merry Christmas."

Judge Claiborne said, "Thank you very much. I will take it home and put it under my Christmas tree."

Mr. Wyman said, "Please don't do that. There is a hundred thousand dollars in that box."

So, Judge Claiborne said, "Well, are you serious? Do you mean that?" And he said, "Yes, there is a hundred thousand dollars in that box and that's for you. That's a gift from me to you to do with as you see fit, to use it for yourself or your family. Please don't make any investments with it," or something to that nature.

Q And that was in December of 1972?

A Yes, sir.

Q Would you describe to the jury what you saw as far as how that box or gift was packaged?

A It was wrapped in a Christmas-type wrapping.

Q And it was handed to Judge Claiborne?

A It was handed to Judge Claiborne, yes, sir.

Q And did you leave the room before or after Judge Claiborne?

A After.

Q Did Mr. Selman leave with you or not?

A Yes, he did.

Q And when Judge Claiborne left, did he take the package with him when he left the room?

A I assume that he did.

Q All right. Now, did you know Mr. Wyman well?

A Yes, very well.

Q Could you describe to the jury what his financial condition was, if you know?

A Mr. Wyman was a gentleman who was extremely well known in gambling circles and was a very high player, he gambled many a thousands of dollars in the course of an evening. He would win and lose giant sums of money and from time to time he was flush with money and from time to time he was short of money, but he always seemed to bounce back and always seemed to be a man of generous means.

Q Was he a gambler?

A Yes, sir, he was.

Q Did you ever see him win money?

A Oh, yes. Many times.

Q What is the most amount of money you ever saw him win?

A Specifically I couldn't say, but it was in the hundreds of thousands of dollars.

Q Did you ever see him lose money?

A Yes.

Q What is the most you ever saw him lose on any given occasion?

A Probably within the same amount, two, three, four hundred thousand dollars.

Q Do you have any personal knowledge as to where he kept his money?

A Yes. He kept most of his fund as far as I know in locked boxes in the hotel.

Q When you say locked boxes, what do you mean?

A Security boxes in the cage.

Q Did you ever see any of the security boxes in which he kept money at the Dunes?

A Oh, yes.

Q Did you ever see the contents of any of these boxes?

A Yes, I did.

Q Could you describe approximately what, how much money, if any, were in any of the boxes?

A On a number of occasions I saw probably three, four, five hundred thousand dollars in cash in those boxes.

Q And calling your attention to the period of time around

1972, would you characterize his financial condition similarly to that as you told us thus far?

A Yes.

Q Are you able to give us an opinion as to whether or not, if you know, Mr. Wyman was generous?

A An extremely generous man.

MR. GOODMAN: May I have the Court's indulgence please?

I have no further questions of Mr. Duckworth.

MR. HENDRICKS: No cross.

THE COURT: No cross-examination?

Thank you, Mr. Duckworth. You may be excused.

(Whereupon the witness was excused.)

THE COURT: Well, members of the jury, for working on a Saturday I think we have had enough. Unless you have got a witness you would like to get off who may be a short one?

MR. GOODMAN: It depends on whether Mr. Hendricks is going to cross or not.

THE COURT: Well, he was short enough on that last witness, I think.

MR. GOODMAN: I would like to, in order to satisfy travel arrangements, I would like to call one more witness.

THE COURT: All right. I take back what I said.

(Whereupon the witness was duly sworn.)

ARTHUR SELMAN, DEFENSE WITNESS, SWORN

THE COURT: Please state your name and spell your last name, sir?

THE WITNESS: Arthur Selman, S-e-l-m-a-n.

DIRECT EXAMINATION

BY MR. GOODMAN:

Q Where do you reside?

A Las Vegas, Nevada.

Q How long have you lived in Las Vegas, Nevada?

A In excess of 25 years.

Q Was there a time that you worked at the Dunes Hotel?

A Yes.

Q When was that, sir?

A For approximately 11 years, 1972 to 198 -- August 15th, 1983.

Q What was your position at the Dunes Hotel?

A Assistant Casino Manager and Vice President in charge of marketing.

Q And during that period of time, where did you reside?

A At the Dunes Hotel.

Q Did you know -- did you have a suite there or a room or what?

A I had a room. I lived at the Dunes Hotel.

Q Did you know a gentleman by the name of Sidney Wyman?

A Yes.

Q And is Mr. Wyman deceased at this point in time?

A At this point in time, yes, he is.

Q What was your relationship with Mr. Wyman?

A Well, he was my boss and we were very close friends.

Q What was his position at the Dunes, if you know?

A Chief operating officer.

Q Do you know Harry Claiborne?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

Q Would you point him out to the jury, please?

A Sitting at the table in the blue suit.

Q How long have you known Judge Claiborne?

A In excess of 15 years.

Q How do you know Judge Claiborne?

A Well, I know him through Sidney Wyman when he started coming around the Dunes and other hotels I have worked at.

Q Was there a relationship if you know between Judge Claiborne and Sid Wyman?

A Very close relationship.

Q How would you describe that relationship to the jury?

A Well, they were very, very close intimate friends.

Q Did you see them together on occasion?

A On numerous occasions.

Q I would like to call your attention, if I may, to the period of time around Christmas of 1972. Did you have the occasion to be present in Mr. Wyman's suite at the Dune's at a time that Judge Claiborne came there?

A Yes, I was.

Q Could you tell the jury how that came about, please?

A Well, Mr. Duckworth had called me and told me that Mr. Wyman wanted to see us up in his suite, and while we were up in his suite a little later on, Mr. Claiborne came up to speak to Mr. Wyman.

Q And when Judge Claiborne arrived there, and then Mr. Claiborne, an attorney at that time, did anything take place between him and Mr. Wyman?

A Yes.

Q What took place?

A Mr. Wyman gave him a Christmas present.

Q Did Mr. Wyman say anything at the time he gave him the Christmas present?

A Yes, he did.

Q What did he tell him?

A He told him this is for you. I want you to spend this money on yourself. He says you always do a lot for other people, you made a lot of bad investments and I would like you to use this money for yourself.

Q Did Mr. Wyman at any time indicate how much was in the Christmas present?

A Yes, he did.

Q What did he say?

A He said there's a hundred thousand dollars in this box.

Q How, if you recall, was the present wrapped if at all?

A In Christmas paper.

Q Now, were you familiar, around the period of time of 1972 with Mr. Wyman's financial condition?

A Yes, I was.

Q Would you describe it to the jury?

A He was a man of great wealth, had lots of cash.

Q Did you ever see him with cash?

A Many times. Numerous times.

Q In what type of situations?

A Well, we used to, in poker games, we used to go out and gamble two, three nights a week and before we left the Dunes Hotel, he would go to his safety deposit box.

Q How much money did you ever see him -- what was the most you ever saw him with at any given time?

A I saw him with hundreds of thousands of dollars in front of him at a poker game, many poker games.

Q This happened on more than one occasion?

A Numerous occasions.

Q Do you know where he kept his moneys?

A In the safe deposit boxes in the Dunes cage.

Q Did you ever see him in the vicinity of those boxes?

A Yes. Many times.

Q Did you ever see the boxes themselves?

A Yes, I did.

Q Did you ever see what was in the boxes?

A Yes, I did.

Q Could you describe what was in the boxes?

A There was way in excess of a half million dollars in cash.

Q How do you know that?

A Because he opened it up, he would stuff his pockets and we would leave the hotel to play in other hotels.

Q Would you describe -- how would you describe Mr. Wyman as far as his trait of generosity?

A Probably one -- the most generous man I have ever known in my life.

MR. GOODMAN: Nothing further.

THE COURT: Cross-examine?

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CROSS-EXAMINATION

BY MR. HENDRICKS:

Q Mr. Selman, did Judge Claiborne spend a lot of time at the Dunes?

A Yes, he did.

Q About how often would you see him there?

MR. GOODMAN: May we have a time, please, your Honor, the time period that he is being asked about?

THE COURT: Well, start with 1972 or thereabouts, I suppose.

BY MR. HENDRICKS:

Q During that period of time?

A At least several times a month.

Q Now, do I understand correctly, Mr. Selman, that at the time of this presentation of the Christmas gift in December of 1972 you were not, you received a call from Mr. Wyman?

A No. I received the call from Mr. Duckworth and I went upstairs with Mr. Duckworth.

Q Okay. So what was the purpose of your going upstairs?

A Casino related business. He wanted to talk to us about some business of the casino.

MR. HENDRICKS: Thank you, that's all.

MR. GOODMAN: No questions.

THE COURT: May this gentleman be excused?

MR. GOODMAN: Yes, your Honor.

THE COURT: Thank you, Mr. Selman.

THE COURT: Mr. Goodman, we have got five minutes. You are entitled to the full day if you have got a witness.

MR. GOODMAN: I have some folks who came in from out of town. I would like to use them if I may.

THE COURT: If you have got a short one.

(Whereupon the witness was duly sworn.)

WILLIAM KLISKA, DEFENSE WITNESS, SWORN

THE COURT: Would you please state your full name and spell your last name, sir?

THE WITNESS: William Kliska, K-l-i-s-k-a.

DIRECT EXAMINATION

BY MR. GOODMAN:

Q Where do you reside?

A Beverly Hills, California.

Q How are you employed?

A I work for the Dunes for the past ten years.

Q Where is your principle place of business?

A Beverly Hills.

Q Where is the Dunes Hotel located?

A In Las Vegas.

Q Do you know or did you know a gentleman by the name of Sid Wyman?

A For over 35 years.

Q And what was your relationship with Mr. Wyman?

A He was one of my dearest friends.

Q Do you know a gentleman by the name of Harry Claiborne?

A I do.

Q And how long have you known Harry Claiborne?

A I have known of Harry Claiborne for many years. I got to know Harry Claiborne after Sid Wyman's death when we became friendly. I didn't know Harry Claiborne before Sid passed away.

Q And when did Mr. Wyman pass away.

A In 1978. June.

Q Mr. Kliska, prior to Mr. Wyman's death, did he have the occasion to have a discussion with you concerning Harry Claiborne?

A Yes.

Q And was the discussion, in order to focus, about any type of gift or present that Mr. Wyman gave to Harry Claiborne?

A Yes.

Q Where did the discussion or conversation take place?

A It took place in my car.

Q Where, in what city?

A In Beverly Hills. We were going to the racetrack down there.

THE COURT: What year are we talking about?

THE WITNESS: Either 1973 or '74. I am not sure.

BY MR. GOODMAN:

Q Do you recall what if anything Sid Wyman said, pertaining to that subject matter?

A We were having a normal conversation and he told me that he gave Harry Claiborne a substantial gift, and I said, "What do you call substantial?"

He said, "I gave him a hundred thousand dollars."

Q And did he explain why he gave him a gift of a hundred thousand dollars?

A No, sir.

Q Did you have any further discussion with Mr. Wyman concerning his giving the gift of a hundred thousand dollars?

A At that particular time? No. That ended the conversation there and then, particularly in reference to what you are referring to.

Q That was the end of it?

A That's correct.

MR. GOODMAN: Thank you.

THE COURT: Cross-examine?

MR. SHAW: No questions.

THE COURT: Thank you, sir. You may be excused, Mr. Kliska.

THE WITNESS: Thank you.

MR. GOODMAN: The next witness, your Honor, would be a longer witness and I believe I can impose upon him to come back on Monday.

THE COURT: If he is going to be a long witness, we can't hold the jury any longer.

Thank you, ladies and gentlemen, you may be excused until Monday morning at 9:30. I have arranged for the marshal for those who desire to do so, to attend church services and of course the one gentleman who wants to go to his office or offices, he will be accompanied by a marshal.

I am not asking, if you have to go to church, that's up to you. But the marshal will accompany you. Thank you, ladies and gentlemen. Have a pleasant remaining weekend.

(Whereupon the jury was excused and the following proceedings were held in open court out of the presence of the jury.)

THE COURT: I realize, Mr. Hendricks, that I cut you off from the argument on what Mr. Wyman said, but in reading Rule 804, it is quite true that a dead person's testimony has equivalent circumstantial guarantees of trustworthiness, if the Court determines that first the statement is offered as evidence of a material fact; second, the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and third, the general purposes of these rules in the interests of justice will best be served by admission of a statement into evidence.

Now, of course, at the last trial I excluded it because counsel for the defendant hadn't read this rule which goes further and says, however, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it including the name and address of the declarant.

I don't have the notices before me, but I did receive several of them and I am just assuming that as to these witnesses that was done.

Now, the Rules Committee places a great burden on a judge to, quote, "determine whether a statement has equivalent circumstantial guarantees of trustworthiness." I don't see how a judge can perform that task, when he is not the trier of fact.

That's why I had concluded in advance that I was going to let that testimony in.

Don't forget, gentlemen, I request any further information with respect to the proposed charge by Monday morning.

Now, let me take up this Government's request for judicial notice which is satisfactory and assuming that an event occurs, I am sure that Defendant's Exhibit 1 will probably be ultimately admitted. Is there any desire that I include that April 11 date as being on a Friday.

MR. RAGGIO: Yes, your Honor.

THE COURT: Do you have any other dates that you want to submit and if so, I have got to include this in my charge.

MR. GOODMAN: That's the only one we can think of, your Honor.

THE COURT: All right. Anything further then, gentlemen?

MR. SHAW: No, your Honor.

MR. GOODMAN: No, your Honor.

THE COURT: Mr. Goodman, I am sorry that I had to speak pretty rough to you, but I have about had it from you and I think there is a limitation on everything. When you are in court you act as a gentleman and I just want to let you know, we have gotten along personally in chambers, every other place perfectly all right, but I say you haven't got a right to get up in this court and say that I am biased and prejudiced. You have done it twice before. I have ruled on it. Your point has been made. You can make it in the court of appeals, but you keep that mouth shut on this subject from now on. Di I make myself perfectly clear?

MR. GOODMAN: I understand what the Court is saying.

THE COURT: All right. Court will be in recess until Monday morning.

(Whereupon the proceedings recessed until August 6, 1984, at 9:30 o'clock a.m.)

-o0o-

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, SUZANNE KUES ROWE, Certified Shorthand Reporter No. 127, do hereby certify that I was present on the 4th day of August, 1984, at the hour of 9:30 o'clock a.m. thereof, int the United States District Court, District of Nevada, Reno, Nevada, and reported the proceedings in the within-entitled cause in stenotype noted, which were there-after transcribed by me;

That the foregoing transcript, consisting of pages 443 through 676-a, contains a full, true and complete transcription of my said stenotype notes, and is a full, true and correct record of said proceedings had at said time and place.

Suzanne Kues Rowe

SUZANNE KUES ROWE, CSR, RPR, CP
Nevada CSR No. 127

No. 84-1294

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-appellee

vs.

HARRY E. CLAIBORNE,

Defendant-appellant

ORIGINAL

RECORD IN FORTY-TWO VOLUMES

REPORTER'S TRANSCRIPT

IN FORTY VOLUMES

Appeal from the United States District Court for the

District of NEVADA (RENO)

CR-R-83-57-WEH

VOLUME 34

FILED DECEMBER 13, 1984

PHILLIP B. WINBERRY

Clerk of the United States Court of Appeals

[illegible]

ORIGINAL

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATE OF AMERICA,)
)
Plaintiff,) Case No. CR-R-83-57-WEH
)
v.) Reno, Nevada
) August 6, 1984
HARRY E. CLAIBORNE,) 9:30 o'clock a.m.
)
Defendant.)
. . . .

SEP 11 [illegible]

VOLUME IV

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE WALTER E. HOFFMAN, and a jury.

For the GOVERNMENT: STEVEN A. SHAW, ESQ.
WILLIAM C. HENDRICKS, III, ESQ.
JAN N. LITTLE, ESQ.

For the Defendant: OSCAR B. GOODMAN, ESQ.
WILLIAM J. RAGGIO, ESQ.
J. RICHARD JOHNSTON, ESQ.

Reported by: CAPITOL REPORTERS
Certified Shorthand Reporters
BY: MARY E. BELL, CSR #98
108 West Telegraph Street
Carson City, Nevada

CERTIFIED TO BE A TRUE COPY
CAROL C. FITZGERALD, Clerk
United States District Court

RENO, NEVADA, MONDAY, AUGUST 6, 1984, 9:30 A.M.

THE COURT: I believe Mr. Kliska was on the stand. No, we have a new witness. We had completed the last witness; is that right?

MR. GOODMAN: Correct, your Honor.

THE COURT: Call the jury, Mr. Marshall.

MR. GOODMAN: I'll get the next witness, your Honor.

TED BINION, DEFENDANT'S WITNESS, SWORN

THE COURT: Good morning, ladies and gentlemen of the jury. The witness on the stand has been duly sworn and we are ready to proceed. Would you please give your full name and spell your last name?

THE WITNESS: Ted Binion, B-i-n-i-o-n.

MR. GOODMAN: May I proceed, your Honor?

THE COURT: Yes.

MR. GOODMAN: That you.

DIRECT EXAMINATION

BY MR. GOODMAN:

Q Mr. Binion, where do you reside?

A 1312 South 6th Street, Las Vegas, Nevada.

Q What is your age, sir?

A 41.

Q How are you employed?

A I'm a casino manager at the Horseshoe Hotel and casino in

Las Vegas.

Q What are your duties and responsibilities as far as that employment is concerned?

A I run the crap games and 21 games and all the table games.

Q Is your family also involved in the Horseshoe Hotel?

A Yes, I own it with my mother, brother and two sisters.

Q Is your father also associated with the Horseshoe Hotel?

A Yes.

Q In what capacity?

A Well, he's worked there in the publicity department for sometime but he's ill right now and he hasn't been working for quite sometime.

Q Was there a period of time that your father was residing at the Horseshoe Hotel?

A Yes, up until his illness.

Q Do you know Harry Claiborne?

A Yes, very good since 1946.

Q Do you see him in the courtroom?

A Yes, I do.

Q Would you please point him out to the ladies and gentlemen of the jury?

A He's a gentleman writing over there between the other two gentlemen at the table.

Q How would you describe your relationship with Harry Claiborne?

A Very close, he's been a close friend of my father and family since we moved to Las Vegas in 1946.

Q Would you see Harry Claiborne at the Horseshoe Hotel and Casino?

A Yes, very often.

Q How frequently over the years would you say he went to the Horseshoe hotel?

A He came to the Horseshoe Hotel just about everyday to eat lunch.

Q Did he sit in any particular place when he came to eat lunch?

A Yes, the same booth that my family sits in.

Q Where is that located?

A Just as you walk in, the first booth.

Q Would you join him on occasion when he came there?

A Yes, if I happen to be around. I usually work nights when he usually came during the day but when I came during the day time I would join him.

Q When he came there he would eat and converse, would he not, with your family?

A Yes.

Q Would that include your dad as well as yourself?

A Yes, he's very close friends with my father, he's best friends.

Q Did there come a time, Mr. Binion, when Harry Claiborne asked you to hold something for him?

A Yes.

Q Was that around December of 1972?

A I would say, yeah, that would be about the time. It was a Christmas wrapped package with $100,000 in it from Sid Wyman, was a Christmas present.

MR. HENDRICKS: Your Honor, I want to move to strike the volunteered statement regarding Mr. Wyman.

THE COURT: Just answer the question, if you will, Mr. Binion, rather than anticipate it. The question is did there come a time and the answer is yes or no.

THE WITNESS: Okay.

BY MR. GOODMAN:

Q How did it come about that Harry Claiborne gave you this Christmas package?

A Well, he probably just ran into me rather than my mother or brother and he asked me if I --

MR. HENDRICKS: Objection, your Honor. I'm going to object to the hearsay, any statements made by the Defendant.

THE COURT: Sustained.

BY MR. GOODMAN:

Q Did you see Judge Claiborne at the Horseshoe?

A Yes.

Q Did Judge Claiborne give you anything?

A Yes.

Q What did he give you?

A A package, a Christmas wrapped package with $100,000 in it.

Q What did you do with that package and the moneys which were contained therein?

A He opened the package and he gave me the money to keep on safe deposit for him.

Q Where did you place it?

A In a safety deposit box that I had in the cashier's cage at the Horseshoe.

Q Whose safe deposit box was it?

A It was my personal safe deposit box.

Q Did you place the entire packet in the box or did you do anything with the contents?

A I gave him two envelopes and he signed them and wrote on them and then I put the money in the envelopes and placed them in the back and locked the boxes -- box.

Q Are you able to tell the jury how much you placed in any one of the two envelopes?

A It was 50,000 in each envelope.

Q And at the time that Judge Claiborne handed you this package did he say anything about where the package came from?

A Yes, he did.

Q What did he say?

MR. HENDRICKS: Objection, hearsay.

THE COURT: Sustained.

MR. GOODMAN: Your Honor, if it please the Court, notice was given about this.

THE COURT: Well, this is not notice of a departed person. It's notice of a living person.

BY MR. GOODMAN:

Q When he gave you the money you put it in the safety deposit box; is that correct?

A Yes, sir.

Q Did there come a time thereafter that a request was made of you to remove any of the moneys which were in the box?

A Yes. During the --

MR. HENDRICKS: Objection, that called for a yes or no answer and I'm going to object to any proffered hearsay.

THE WITNESS: Yes.

BY MR. GOODMAN:

Q When was this request made?

A During the time I kept the money.

Q By whom was the request made?

A By Mr. Claiborne.

Q Did you, in fact, give him any of the moneys or see him take any of the moneys which were placed in the envelopes which had been held by you in your safety deposit box?

A Yes. On three different occasions while I was keeping the money he came to me and got partial, partial amounts of it, small amounts of it.

Q Do you know how much he took out?

A Yes.

Q How much did he take out?

A One time $10,000 and two times 5,000.

Q Was there a time in August of 1978 when he removed the balance of the moneys from your possession?

A Yes, he did.

Q Did he come over for it?

A Yes, he did.

Q Did you, in fact, give him the envelopes?

A Yes, I did.

MR. GOODMAN: May I have the Court's indulgence, please? I have nothing further, your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HENDRICKS:

Q Mr. Binion, your casino is not a bank, is it?

A No, it isn't, but many people keep money --

Q Excuse me, sir, is it or is it not?

A No, but it is a depository for money.

Q You don't have savings accounts there, though, do you?

A No, but we've got a great deal of deposits.

Q Do you have savings accounts there?

A Not accounts, no.

Q Accounts where customers can come in and deposit money in savings accounts?

A Well, we actually do in a way.

Q You have savings accounts?

A Yes, to where a person puts their money on deposit and writes withdrawals.

Q Do you pay interest on those savings accounts?

A No, we don't.

Q Would you call those passbook savings accounts?

A No.

Q Do you issue certificates of deposit --

A Yes, we do --

Q -- certificates of deposit?

A Yes, we do.

MR. GOODMAN: Your Honor, may the witness please be able to finish his answer?

THE COURT: Well, he interrupted the question first. Restate the question, if you will, please.

BY MR. HENDRICKS:

Q Do you issue certificates of deposit?

A Yes, we do.

Q Do you pay interest on those certificates of deposit?

A No, we don't.

Q So when you got this money you say from Judge Claiborne in 1972 did you pay interest on that money?

A No, I didn't.

Q This money that you say you got from Judge Claiborne in 1972, was it insured by the Federal Deposit Insurance Corporation?

A No, but I would more or less insure it personally.

Q Was it insured by someone other than your own worth?

A Well, if something happened to me, my family would.

Q Was it insured by an insurance corporation?

A No.

Q So you'd agree with me, Mr. Binion, that for the period of time that you had this money from Judge Claiborne from '72 until the time of withdrawal and you say that came in what year?

A I think '78, I think late '78.

Q So it was about six years that you paid no interest on that money for that entire period of time; is that right?

A Yes.

Q And aside from your own worth there was no insurance policy on that money which protected it in any fashion, was there?

A No, sir.

Q Now to you knowledge, Mr. Binion, there are banks in Las Vegas right in the downtown area, are there not?

A Sure is.

Q And those banks pay interest on deposits, do they not?

A Yes, certain amounts of deposits, yeah.

Q Like savings accounts?

A Yes.

Q And those banks are insured, aren't they?

A Yeah.

Q And those banks give receipts for deposits, do they not?

A Yeah, sure.

Q Could I see Government's Exhibit 45? Let me show you Government's Exhibit 45, if I might, and ask you whether you can identify that as a map of downtown Las Vegas?

A Yes, it is.

Q Do you see your casino indicated on the map there?

A Well, let me find it here. Yes, I found it.

Q Can you see the Federal Courthouse there on the map?

A Yes.

Q Now in between the casino and the Federal Courthouse can you find or are you able to locate a block which is marked out in blue pen which indicates a bank?

A Sure. Three of them.

Q Three of them. Which ones are those?

A The Pioneer Bank, First Interstate and the Valley Bank.

Q Was that Pioneer Citizens?

A Just says Pioneer Bank here but it's Pioneer Citizens Bank is the name.

Q What's the other bank that you see there?

A Valley Bank Building and the First Interstate Bank.

Q Do you know whether the First Interstate Bank was ever known by any other name?

A Yeah, it was the Bank of Nevada, wasn't it? And Valley Bank -- oh, excuse me.

Q Do you know by the way whether Judge Claiborne had accounts at any of those banks?

A Don't have any idea.

Q Did Judge Claiborne -- yes or no, sir -- did he ever tell you why he didn't deposit the money in a time certificate of deposit or in a savings account or some other insured account in one of those three banks?

A No.

Q Isn't it true, Mr. Binion, that your casino does have a standard practice whereby customers can come in and make deposits at the cage in the casino?

A Yes.

Q This is done, this practice is done all the time for customers who may be using your facilities?

A Yes.

Q Many of these customers, people that come in and deposit money with the cage, they may very well be people doing a lot of business with the casino; is that right?

A Yeah.

Q Some of these people are well known to you, are they not?

A   Most all of them.

Q   It's a standard practice for people in your business to become acquainted with the people that do business with the casino?

A   Yes.

Q   And you try to maintain a clear awareness of what's going on there?

A   For sure.

Q   Some of the people that do this are also members or friends of your family, are they not?

A   Yes.

Q   About how many times a year would you think, sir, that this kind of thing happens?

A   Hundreds, maybe thousands.

Q   Thousands of times a year?

A   Yeah.

Q   And many of those thousands of transactions that involve these kinds of deposits with the casino involve people that are known to you?

A   Yes.

Q   And many of them may involve people that are known to your family?

A   Yes.

Q   How long have you been doing this?

A   Since 1951 when the place opened.

Q So wouldn't it be fair to say, then, that from the period of 1972 through 1978 that we're talking about thousands of transactions a year, six years, we're talking about many thousands of such deposits; is that right?

A Yes.

Q Now when these customers come in and make deposits in the normal course of your operations they get a receipt, don't they?

A Yes.

Q And, in fact, it's a standard practice for your casino to generate a three part stub, is that right, reflecting receipt?

A Yes.

Q The customer gets one of those receipts and your casino keeps one of those receipts for its records, right?

A Yes.

Q In fact, you even allow people in your casino to make deposits under aliases, don't you?

A If they wanted to I wouldn't stop them.

Q So a person could come in if they wanted anonymity and make a deposit under a name which wasn't his at all?

A Yes.

Q And isn't it true you do that to facilitate certain of your customers' transactions?

A We just don't question their transactions.

Q Now in this case, sir, there was no receipt at all given to Judge Claiborne, was there?

A None at all.

Q And there was no receipt at all maintained by your casino, was there?

A None at all.

Q And there is no written record anywhere, is there, Mr. Binion, of this transaction, this keeping of money for six years with no insurance and with no interest, this $100,000 transaction, is there, no record?

A You're right.

Q Now, Mr. Binion, you say the money was placed in the vault in about 1972, right?

A Uh-huh.

Q And then after that a withdrawal was made and you remembered the exact amount of the first withdrawal, right?

A No, I really don't remember the exact amount of the first withdrawal.

Q I thought your testimony on direct was that there were two withdrawals of $5,000 and one withdrawal of $10,000?

A Yes, there was.

Q Is it your testimony now that you, in fact, don't remember the exact amount?

A I don't remember the first transaction and I don't remember the date of the transaction.

Q When was the first transaction?

A I would say around '74.

Q When was the second transaction?

A Say around '74 to '75.

Q Was that the $5,000 transaction or the $10,000 transaction?

A I'm not sure. I think the $10,000 transaction came between but I'm not certain.

Q So there was a $5,000 transaction that you remember, you have a distinct recollection but you have no record, right?

A Uh-huh.

Q There was a $10,000 transaction, do you remember that?

A Uh-huh.

Q And then when was the third transaction?

A Oh, somewhere around '75 or '76, I'd say.

Q Which one was that? Was that the $5,000 transaction?

A I think that was the $5,000 transaction, I think, I'm not certain. I'm not certain just when they took place.

Q You have a personal recollection of these transactions in the years between '72 and '78, right?

A Yes.

Q And then just before Judge Claiborne became a Judge he came in and got the rest of the money?

A Yes.

Q How much money was left?

A 80,000.

Q You remember $80,000, right?

A I remember $80,000.

Q Did you count the money at that time, sir?

A No, I didn't.

Q Are you saying, Mr. Binion, that after six years and after thousands, many thousands of transactions involving other people known to you and your family that you remembered with no documents 100,000 and you subtracted in your mind $10,000 and 5,000 and 5,000 and you remember $80,000 with no documentation?

A Well, there was only about five of these transactions that I handled personally without a receipt or anything.

MR. HENDRICKS: That's all I have, thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. GOODMAN:

Q Mr. Binion, were the envelopes placed in your private safety deposit box?

A Yes.

Q So when Mr. Hendricks is asking you about thousands of transactions of customers who deposit moneys with the Horseshoe, those transactions weren't handled in your personal safety deposit box, were they?

A No, and they weren't handled by me personally, either.

Q So the transactions stand out in your mind because you personally took care of this; is that correct?

A It was large and it was rare.

Q Do you recall how the moneys were wrapped?

A In $5,000 wrappers and 5,000 to a boodle with rubber bands around each boodle of 50.

Q So you have $5,000 with an individual wrapper around it and then ten of those wrappers with the money contained therein held together by some kind of a rubber band?

A Yes.

Q Now the Horseshoe maintains a display for public enjoyment of some $1 million in the casino area, does it not?

A Yes, it does.

Q And that display is out there all the time, isn't it?

A Yes, it is.

Q That money, the $1 million, that doesn't draw interest, does it?

A No, it don't.

Q The Horseshoe also maintains in its safe and vaults large amounts of cash and currency, does it not?

A Between 2 and 3 million.

Q That's on any given day?

A Everyday.

Q And that money doesn't draw interest, does it?

A No, it doesn't.

RECROSS-EXAMINATION

BY MR. HENDRICKS:

Q Mr. Binion, you're not suggesting that the 2 or 3 million in your vault belongs to Judge Claiborne, are you?

A No.

Q Of course not?

A No.

Q And you're not saying that that one million in that lamanated plexiglass display belongs to Judge Claiborne, are you?

A No I'm not.

THE COURT: Are you finished with Mr. Binion?

MR. GOODMAN: One more question with the Court's permission.

FURTHER REDIRECT EXAMINATION

BY MR. GOODMAN:

Q The money that was left by Judge Claiborne, they weren't used by you or Judge Claiborne, were they?

A No, they weren't.

MR. GOODMAN: No further questions.

THE COURT: Thank you, Mr. Binion, I take it you may be excused.

DAVID GOLDSTEIN, DEFENDANT'S WITNESS, SWORN

THE COURT: Will you please state your full name and spell your last name, sir?

THE WITNESS: David Goldstein, G-o-l-d-s-t-e-i-n.

THE COURT: You may take a drink of water in the meantime, Mr. Goldstein.

DIRECT EXAMINATION

BY MR. RAGGIO:

Q Mr. Goldstein, where do you reside?

A Las Vegas.

Q Mr. Goldstein, I think you indicated to me you've had severe bronchitis over the last few days?

A I've just come out of a sick bed.

Q I think the Judge and jury if you need to take a drink of water will understand, okay?

THE COURT: Any time.

BY MR. RAGGIO:

Q How long have you been resided in Las Vegas?

A August the 30th will be the 27th my 27th year.

Q What has been your business or occupation?

A Casino manager and owner of the Dunes Hotel.

Q How long were you associated with the Dunes Hotel in Las Vegas?

A 27 and a half years.

Q Over that period of time what years would that have been?

A 1957 to '83.

Q During that period of time that you were associated with the Dunes Hotel did you know one Sidney Wyman or known as Sid Wyman?

A Yes, sir.

Q Over what period of years did you know Sid Wyman?

A I've known Sid since 1946.

Q Did you know him until he died?

A Very well.

Q Do you recall the year that Mr. Wyman died?

A I believe it was '78.

Q Describe your association with Mr. Wyman?

A Well, he was one of the nicest gentleman, most liberal persons I ever met in my life, very well liked.

Q Did you have an opportunity to observe him frequently?

A Yes, quite often.

Q To be with him frequently?

A Yes.

Q What type of relationship did you and Mr. Wyman have?

A Well, we were partners in the Dunes Hotel.

Q You had an interest in the Dunes Hotel?

A Yes.

Q And did Mr. Wyman also have an interest in the hotel?

A Yes.

Q What was his position with the Hotel?

A He was more or less the general manager, chief executive officer.

Q During that period of time did you know Judge Claiborne who was then an attorney, Harry E. Claiborne?

A Yes, sir.

Q Did you know what type of relationship there was or existed between Mr. Wyman and Harry Claiborne?

A Yes, I would say very close relationship.

Q Was that as an attorney or as a friend?

A Attorney and friend.

Q Would you have an opportunity during those years to see Mr. Claiborne, then an attorney, with Mr. Wyman?

A Yes, I have, many times.

Q How frequently would you say?

A I would say probably twice a week at least.

Q Did you ever see them dining together?

A Yes.

Q In the Dunes Hotel?

A Yes, sir.

Q During that time how would you characterize Mr. Wyman insofar as generosity?

A I would say he was a very liberal man, always wanted to help people, that was his philosophy of life. He just loved to help people.

Q Did he ever help you?

A Yes.

Q Do you want to tell us in any way that he helped you financially?

MR. HENDRICKS: I object to this. This is completely irrelevant.

MR. RAGGIO: Well, I think it goes to the issue of Mr. Wyman's tendency to be generous and also make gifts.

THE COURT: One is a partner and the other is not, of course.

MR. HENDRICKS: Yes, your Honor, but I think it goes to the proclivity of making gifts, and then that's not an issue in this.

MR. RAGGIO: It's been challenged by the Government.

MR. HENDRICKS: The gift in '72 hasn't been challenged by the Government, your Honor.

MR. RAGGIO: There's been other testimony on this, your Honor, and I think gets relevant.

THE COURT: I'll sustain the objection.

MR. RAGGIO: All right, your Honor.

BY MR. RAGGIO:

Q What was Mr. Wyman's occupation?

A Gambler.

Q How would you characterize the extent to which he was a gambler?

A Well, he was a very high roller. Whatever, playing poker or whatever.

Q Did you have occasion to see him when he was gambling?

A Very often.

Q Would he engage in private poker games?

A Yes.

Q What's the most you ever saw him win at a gambling game?

A I think it's as high as three or 400,000 that I've seen.

Q What's the most you've ever seen him lose?

A Somewhere near that.

Q Did he retain on his person or in his custody large amounts of money?

A Yes, he did.

Q Have you seen that?

A Oh, yes. Many --

Q What's the largest amount of cash you ever saw him with or in his custody?

A Well, I've been to his box with him. I've seen the whole box full of 100 dollar bills.

Q How much money was in the box at that time?

A I would say close to a half million dollars.

Q When you say the box, where was that box maintained?

A Cashier's cage at the Dunes Hotel.

Q Directing your attention now to the year 1973, did you have a conversation with Mr. Wyman at the Dunes Hotel?

A Yes.

Q Where was that conversation?

A At the dinner table.

Q Now I'm directing your attention to a conversation pertaining to Judge Claiborne, then Harry Claiborne, and a gift. Will you relate the conversation and what Mr. Wyman said --

well, first of all, who else was present?

A No one, just he and I. We had dinner.

Q What was the occasion that you were together?

A Occasionally we'd sit alone and discuss things.

Q Were you having dinner?

A Yeah, we were having dinner and a couple of drinks.

Q Will you relate the conversation that Mr. Wyman had with you concerning that item and how it came about?

A Well, we got talking about Lee Bailey, F. Lee Bailey. He's a friend of mine.

Q The attorney?

A And he was stating to me or saying to me, he said, "Mr. Bailey couldn't carry Harry Claiborne's suitcase", more or less complementing Harry Claiborne.

Q Was there anything else said?

A Yes.

Q Tell us what was said?

A We got to talking and he said, "Dave", he said, "You know I'm not a bragger but I gave Harry Claiborne probably the biggest gift he ever got in his life at Christmas". He went on to say, he said, "I gave him $100,000 for a Christmas present".

MR. RAGGIO: Nothing further.

CROSS-EXAMINATION

BY MR. HENDRICKS:

Q Mr. Goldstein, is it?

A Stein or Stein, either one.

Q Which do you prefer?

A I don't care.

Q Mr. Goldstein, when you had this conversation, was it in 1973?

A Yes.

Q Mr. Wyman was referring to the Christmas of the preceding Christmas?

A Yes.

Q That would be the Christmas of 1972?

A Yes.

Q Now do you know what happened to the $100,000 between '72, what then Mr. Claiborne did with the $100,000 in 1972?

A I have no idea.

Q You wouldn't know, then, whether he put it, the money, in a noninterest accruing account uninsured for six years, would you?

A No.

MR. RAGGIO: Objection, your Honor. The witness has stated he doesn't know.

THE COURT: Well, sustained. Of course he's answered he doesn't know.

MR. HENDRICKS: Thanks very much.

MR. RAGGIO: I have no further questions.

THE COURT: May Mr. Goldstein be excused?

MR. GOODMAN: Yes, your Honor.

THE COURT: Thank you, Mr. Goldstein, you may be excused.

THE COURT: Call your next witness, Mr. Goodman.

MR. GOODMAN: I asked the Marshall to please get her. I know she's here.

THE COURT: Oh, I beg your pardon.

LORETTA LYDIA POWELL, DEFENDANT'S WITNESS, SWORN

THE COURT: Please state your full name and spell your last name.

THE WITNESS: Loretta Lydia Powell, P-o-w-e-l-l.

DIRECT EXAMINATION

BY MR. GOODMAN:

Q Is it Miss or Mrs. Powell?

A I use Ms.

Q Where do you reside, Ms. Powell?

A 17201 Laverne Place, Encino, California.

Q Miss Powell, did you know a gentleman by the name of Sidney Wyman?

A Yes, I did.

Q When did you first meet Mr. Wyman?

A On January 6th, 1960.

Q Under what circumstances did you meet him?

A I was on my way across country with a Mr. Petrocelli who was director of the Miss U.S.A. Beauty Pageant I was his first

Miss U.S.A, and we were going there for negotiation with Universal Studios about a contract. Nat King Cole was in Las Vegas and I had never been to Vegas in my life.

Q Was it at that time that you were in Las Vegas that you met Mr. Wyman?

A Yes, a gentleman that I met at the Sands took me over to the Riveria and introduced me to Mr. Wyman and he gave me his card and said, "Miss Powell, if there's ever anything I can do to help you don't hesitate to call upon me".

Q And over the years did a relationship between and you Mr. Wyman take place?

A Yes, we remained friends for the first couple of years and then one time when I was in Las Vegas he asked if when he was in Los Angeles if I would have dinner with him and I said, "Yes, I'd be delighted". He came in and we met, we had dinner and I would see him occasionally at that time.

Q Did the relationship become more serious than that as time went by?

A Yes, at the end of 1963 on Christmas day he sent me a big box that arrived air express and was just like Santa Claus. I opened it up and there was a beautiful mink stole and it was the first gift I had ever received from him other than perhaps a bottle of perfume in the past.

Q And over the years did you become his girlfriend?

A Yes, for a long time until his death.

Q Where were you residing during the years that you were seeing him as his girlfriend?

A Well, I lived in apartments before that until he built a home for me in 1972.

Q Where was the home built?

A The home was built in Encino, California and I've resided there ever since.

Q Would you describe the home?

A Yes. It's a beautiful home with three bedrooms and three baths and a powder room, a pool and gazebo and today it's worth a lot more money than when it was built.

Q Did Mr. Wyman move into the home with you?

A No, he never lived there. As a matter of fact, he never spent a night there until he was very ill, near the end when he was very sick one evening he spent the night downstairs in the guest room because he was quite ill.

Q Where was Mr. Wyman residing during that period of time with your relationship with him?

A He lived at the -- well, when I first met him he had his own place on Deal Drive and then as I recall he lived at, after that I believe it was the Dunes Hotel.

Q Would you visit him at the Dunes Hotel?

A Oh, yes, I had my own room there which was part of his suite and I went there usually every two weeks.

Q Did Mr. Wyman give you gifts over the years?

A Yes, he did.

Q Did he ever give you any cars?

A Yes.

Q What kind of cars?

MR. HENDRICKS: Your Honor, at this point we've heard about the house, I don't think the car is relevant.

MR. GOODMAN: Your Honor, I think it is relevant in this record. There may be an issue as to whether a gift tax return was filed by Mr. Wyman.

THE COURT: Let's get the years straight.

BY MR. GOODMAN:

Q When was the first time, Miss Powell, that you received a car from Mr. Wyman?

A He purchased the first Cadillac for me in 1968 and usually traded it in every three years and purchased a new one except during the year 1971 and '72 we bought one, traded the '71 for a '72 because I didn't like the color.

Q How did Mr. Wyman pay for the car?

A He always paid cash. Not usually, always.

Q Were you with him when these cars were purchased?

A Yes.

Q Did Mr. Wyman ever buy you any jewelry?

A Yes.

Q What year did he buy you jewelry and give you jewelry?

MR. HENDRICKS: I'm going to object to this long littany of gifts she received. It has no relevancy to this case.

MR. GOODMAN: As I say, your Honor, as I understand it, no gift tax was returned by Mr. Wyman.

MR. HENDRICKS: This is insertion of a case which hasn't been put on yet, your Honor.

THE COURT: I've heard nothing about any gift tax at all, Mr. Goodman. I'll sustain the objection.

BY MR. GOODMAN:

Q Did you ever see Mr. Wyman in possession of large sums of cash?

A Yes, I have, many times.

Q What is the most -- excuse me?

A Yes, I have, many times.

Q What is the most amount of money you ever saw him with at any time outside of the Dunes Hotel?

A I was with him once when we went to a stock broker and he had $125,000 in cash that he took out of his pockets.

Q Can you tell us what year that was?

A No, I don't know what year it was. I don't remember.

Q Did you ever see him in the vicinity of any large sums of money which you believed to belong to him while at the Dunes Hotel?

A Well, yes. I went to his box with him that he kept at the City National Bank in Beverly Hills and there was a great deal of money in a rather large box.

Q When did you go there?

A It couldn't say exactly what year but we went there several times through the years. I knew him for a very long time.

Q What's the most amount of money you saw in the box in California?

A I would say very easily $1 million.

Q That was in cash?

A Yes.

Q I'd like to call your attention to the period of time around 1972. Did Sid Wyman ever tell you that he was going to give Harry Claiborne anything?

A Yes, he said, he told me that he was going to give Harry a really nice gift.

Q Was that around Christmas of 1972?

A Yes, I believe it was.

Q 1972, that was around Christmas of 1972, correct?

A Yes, the same year my house was built.

Q Did he indicate with any further specifici[illegible]hat the substantial gift was going to be?

A Well, he intimated that it was to be cash. I knew that much, that it was not going to be a Cadillac because that to him was considered a small gift.

MR. GOODMAN: Thank you. Nothing further.

THE COURT: Cross-examination?

MR. HENDRICKS: No questions.

THE COURT: May Miss Powell be excused?

MR. HENDRICKS: Yes, please, your Honor.

THE COURT: Thank you, Miss Powell, you may be excused.

DAVID SUMNER MOORE, DEFENDANT'S WITNESS, SWORN

THE COURT: Would you please give your full name and spell your last name, sir?

THE WITNESS: David Sumner Moore, M-o-o-r-e.

DIRECT EXAMINATION

BY MR. RAGGIO:

Q Mr. Moore, where do you reside?

A In Sacramento, California.

Q Did you formerly reside in Las Vegas, Nevada?

A Yes, sir.

Q What is your occupation and where are you employed?

A I'm an examiner of question documents and am presently employed by the California Department of Justice in the question documents laboratory.

Q Mr. Moore, is that Department of Justice, is that known as the Bureau of Identification and Investigation or was it formerly known as that?

A Yes, sir, it was.

Q Your assignment is as a question documents examiner did I understand?

A Yes, sir.

Q What are the official duties that you have as a question documents examiner?

A Basically my duties consist of examining documents about which there's some question as to whether the document is geniune or whether it's not geniune. Most of my examinations involve the examination of handwriting or hand printing. I also examine typewriting, I examine documents for alterations or obliterations. I basically examine and try to answer any questions concerning documents.

Q Is your entire time devoted to the examination of question documents?

A Yes, sir.

Q How much formal education do you have, Mr. Moore?

A I have a bachelor of science degree in law enforcement and corrections from the University of Nebraska at Omaha. I also have a Masters of education from the States below Georgia or, excuse me, University of Georgia and States below Georgia.

Q What formal training in the examination of question documents have you had personally?

A I started my formal training in question documents at the United States Army criminal investigation laboratory at Fort Gordon, Georgia in January of 1974. I worked and studied under qualified document examiners who have knowledge and years of experience and it was a formal two-year program. I completed that program in December of 1975 at which time I was qualified as a documents examiner for the Department of the Army. Since that time I've joined a number of different organizations of forensic scientists and I attend their professional meetings and I've done research in the field.

Q Would you tell us the professional affiliations which you have in this field?

A Yes, sir. I'm a fellow of the American Academy of Forensic Scientists, I'm with the Southern Association of Forensic Scientists. I am a member of a Southwestern Association of Forensic Document Examiners and I'm certified as a diplomat of the American Board of Forensic Document Examiners.

Q In the course of your profession have you written any articles or papers on the subject of question documents?

A Yes, sir. A variety of articles on different aspects of question documents. I've presented them to professional meetings and I've also had a number of them published in the Journal of Forensic Scientists.

Q I've asked you these questions, Mr. Moore, because as an expert witness or a person who we intend to call as an expert witness you must be shown to be qualified to testify. Have you ever testified in either state or federal courts as a qualified expert as a question documents examiner?

A Yes, sir, in both state and federal courts.

Q Would you estimate the number of occasions on which you've testified?

A 70 times, 70 odds times.

Q And in how many states if you know?

A I believe 27 or 28 states.

MR. RAGGIO: We are offering the witness in that capacity, your Honor.

MR. SHAW: Your Honor, we have no objection as to that but we'd like to be heard on a different matter outside of the jury.

MR. RAGGIO: Well, your Honor, I think I'm entitled to continue my examination until some issue arises.

THE COURT: I know nothing about what Mr. Moore knows about whatever particular document may be subject to questioning. I don't know whether it's in evidence.

MR. GOODMAN: That's the question, your Honor.

MR. RAGGIO: Well, I haven't asked a question.

MR. GOODMAN: If Mr. Raggio is representing to the Court that we're talking about documents in evidence then I will withdraw the objection.

MR. RAGGIO: Well, I'm not representing anything of the sort, your Honor. This goes to an exhibit which is going to be presented, yes.

THE COURT: Well, it's not in yet.

MR. RAGGIO: I haven't asked about it yet, your Honor, but whatever the Court desires, I intend to ask him about a potential exhibit.

THE COURT: I understand, but once we get the exhibit in, of course it's entirely proper. As I understand it we don't have the exhibit in yet?

MR. RAGGIO: No, your Honor. If you want to hear something on this outside the presence of the jury, I would concede to that.

THE COURT: All right, members of the jury, you will take your usual mid-morning walk.

(The proceedings continued in the absence of the jury.)

THE COURT: What exhibit or exhibits has Mr. Moore examined, gentlemen?

MR. RAGGIO: Excuse me, your Honor?

THE COURT: What exhibit or exhibits has Mr. Moore examined, either actually in evidence already -- of course if it falls in that category there's no problem.

MR. RAGGIO: Your Honor, through Mr. Moore and Miss Becker from the laboratory they will be asked about Defendant's proposed exhibit next in order which is the small vinyl pad and the vinyl pad folio.

THE COURT: Well, there's no question once the exhibit has been testified to but there hasn't been the first shred of evidence yet about that particular exhibit.

MR. RAGGIO: No, your Honor. I would make this representation to the Court. As the Court knows, Miss Becker has come from Washington or from Washington for this purpose this morning. Mr. Moore was also one who was present during that examination and it was our intention to ask them to relate the results of their examination of this exhibit with the indication to the Court that it will be linked with the testimony of Judge Claiborne.

THE COURT: I have no doubt in my mind that as and when Judge Claiborne testifies that he may well refer to that exhibit. And the minute he does, that is proper then for you to put in evidence any expert who may have examined the particular documents and I'm not disputing that. We don't have, we still don't have any assurance that Judge Claiborne is going to testify. I suspect he is, but we have no assurance that he is going to testify. I'm certain no one can make him testify.

MR. RAGGIO: Your Honor, may I indicate this to the Court? I was being cognizant of the travel plans of both Mr. Moore and Miss Becker and was going to indicate to the Court that their testimony would indicate the results that they had obtained in this examination with the indication to the Court that it would be linked up through the testimony. Now I can also do this. We can offer Judge Claiborne for this point out of order for the limited purpose of identifying the exhibit, if that will accommodate them. I was merely trying to accommodate their travel concerns in order to do this at this point. I assure this Court that it will be linked up in that manner. If the Court prefers, I would ask then that we can put Judge Claiborne on for the limited purpose of identifying the exhibit in order that these witnesses can testify and that we can have them relieved of further attendance requirements.

MR. SHAW: Your Honor, we would say that overemphasizes this exhibit. The defense knew the order of their witnesses and they could have advised these people to come at a different time. It's not going to be that much longer and I think this is a critical issue.

THE COURT: I would like to accommodate both Mr. Moore and Miss Becker but certainly that testimony if it relates to that particular testimony is not admissible until it is offered into evidence.

MR. SHAW: Your Honor, one other point if I may. I don't know whether or not this witness has prepared a report but we've never been offered a report or notes or anything about this testimony and I think that would certainly be required according to the Court's ruling and Rule 17.

MR. RAGGIO: Not true. There is no report of any kind that this witness has made and Mr. Moore, I can represent to the Court, what the expert under your order which the defense was allowed to have present during the examination and he will testify as to what occurred during the examination. So there is no written report of any kind to be made available. Your Honor will recall additionally and I think we should have this statement at this time, that the defense received this written report only on the Sunday preceding the trial in this matter. We were not favored with any report until that date and at that time only did it become apparent to us that we were going to have to use or were entitled to use this testimony. I might add to the Court so he --

THE COURT: I will let Mr. Moore give his oral report at this time if he cares to in the absence of the jury.

MR. RAGGIO: All right, your Honor.

BY MR. RAGGIO:

Q Mr. Moore, did you have occasion sometime in June of this year to travel to Washington D.C. or more correctly Rockville, Maryland?

A Yes, sir, I did.

Q Why did you do that?

A It was at the direction of Judge Hoffman's order that a defense expert be allowed to sit in on the examination of this document by representatives of Alcohol, Tobacco and Firearms laboratory.

Q That was at the national laboratory center of the Bureau of Alcohol, Tobacco and Firearms?

A Yes, it was.

MR. RAGGIO: Then, your Honor, I would propose to show the witness this exhibit to be marked for identification.

THE COURT: You may show it to him in the absence of the jury.

BY MR. RAGGIO:

Q Have you ever seen this exhibit, potential exhibit?

A Yes, sir, I have.

Q Mr. Moore, where did you see that?

A The first time I saw this was on the morning of the 27th of June. It was in the custody of IRS agent Donald Skelton at the laboratory in Rockville who also was present.

A At that time was the prosecutor, Mr. Shaw, also a representative from the Michigan State Police Crime Lab, Detective Lieutenant Speckin. Present were members of the Alcohol, Tobacco and Firearms laboratory which consisted of the chief, Mr. Dan Gardner, a document examiner by the name of Claude Eaton and a chemist by the name of Joanne Becker.

Q Was an examination of any kind made with respect to this exhibit?

A Yes, sir, a number of different types of examinations were conducted.

Q Will you tell us what examinations of the exhibit were made in your presence?

A Mr. Eaton, the document examiner, initially examined the document, both the binder which I believe is called a pad folio and the legal pad inside it. He examined this under the microscope. He also examined that by ultraviolet and infrared light. He conducted an examination called an electrostatic detection apparatus, which is nothing more than an instrument that visualizes indentations on documents.

I also was present when the fingerprint man was there, a Ben Wilson and Mr. Eaton examined the document and the Binder under argon ion laser and also put it in a super glue vapor. Subsequent to that the documents were given to Miss Becker and she conducted ink examinations and ultraviolet and infrared light exams.

Q And during the time that you said you were present for these examinations were the other individuals you named, including Mr. Shaw and Mr. Skelton, also present?

A Yes, sir.

Q With reference to the examination made by ESDA by Mr. Eaton, was anything of significance noted during that examination?

A Nothing of investigative significance, no, sir.

Q Referring to the examination by laser, were you present during that examination?

A Yes, sir, I was.

Q And would you describe what was done with respect to the folio pad, if anything?

A When the folio pad was placed underneath the laser light in an area approximately this spot which is upper center --

Q You're indicating a spot on the front of the pad?

A Yes, sir. About two inches below the Defendant's exhibit tag, this area luminesced and as it luminesced, the information that was there appeared to be a price tag and the amount of it appeared to be $1.38.

Q When you say it appeared to be a price tag, you mean the tag itself?

A No. What appeared there was the impression or the luminescence of the tag which apparently transferred to the plastic sheet.

Q What would that indicate to you as a question documents examiner?

A That a price tag at one time bearing the dollar value of $1.38 was affixed there.

Q How would that residual impression remain after a price tag has been removed?

A Possibly through some chemical action of the adhesive on the back of the tag and the plastic binder itself and maybe some sort of chemical reaction. The specifics I don't know. I just know it was there and it did luminesce under the ion laser.

Q Were you able to personal observe that?

A Yes.

Q You said you were also there with Miss Becker in that labbratory in connection with the ink examination?

A That is correct, sir.

Q How long did this entire examination of this exhibit take place?

A I was there for two full work days and when I departed on the second, the afternoon of the second work day Miss Becker was continuing with her search of the ink library.

Q What happened with reference to this exhibit itself?

A This exhibit was given back to Mr. Skelton on the afternoon of the 28th of June.

Q That's the following day?

A Yes, sir.

Q Did you see it thereafter prior to this trial?

A I saw it last night.

Q Other than that?

A No, sir.

Q Is that the same exhibit as when you first saw it?

A Yes, it is the same exhibit.

Q During the time that it was being examined were there any physical changes made on that exhibit by any of the persons who examined it?

A Yes, sir, a number of different alterations.

Q Would you describe those alterations?

A Yes, sir. Mr. Eaton removed the very last sheet of paper from this pad and retained that.

THE COURT: Anything written on it?

THE WITNESS: No, sir, there was no writing on it at that time.

BY MR. RAGGIO:

Q Were any of the pages removed on which writing appeared to your knowledge?

A Not to my knowledge, no, sir. Also Mr. Eaton marked each exhibit with his exhibit designation and his initials and he also cut out a portion of the inside flap.

Q Would that be the vinyl flap on the rear or back inside cover?

A Yes, sir.

Q Indicate where that is on the back.

A Yes, sir, in this location.

Q That was physically cut off; is that correct?

A Yes, sir. Mr. Eaton -- excuse me.

Q Go ahead.

A I was going to say Mr. Eaton also slit open the inside of both the vinyl pad and removed the cardboard inserts from both of those.

Q What about the ink expert?

A Miss Becker took approximately 24 separate samples of small punches out of about 24 plugs of 24 different times. In other words, 24 different plugs of 24 separate areas on the numbered, on the ink, different inks on the pad.

Q You're referring to the yellow pages on which writing appears; is that correct?

A Yes, sir.

Q Does the pad itself contain some printed matter at the top of the binding?

A As far as a product name, sir?

Q Yes.

A Yes, it does.

Q Would you read that, please?

A In the center it has Mead legal pad.

Q Would you spell that?

A Mead, M-e-a-d, legal pad and the upper right-hand corner it has a product number, that number is 59-6006 and below that is a Mead product and then it has an address, maybe Hallman Building, Dayton, Ohio, and a zip code of 45402. In the upper left-hand corner it has 50 sheets, five inches by eight inches.

Q Does the vinyl pad itself, the folio, vinyl pad folio, have any imprint, impression or embossment on it?

A Yes, sir, it does.

Q What does it says?

A I says, "A Product of Westab", W-e-s-t-a-b, "Dayton, Ohio, 45402, A Division of the Mead Corporation", and it has a number 33-9040.

MR. RAGGIO: Your Honor, that would be generally the testimony of this witness.

THE COURT: Do I understand that you did not, Mr. Moore, perform any individual tests of your own but you were present at the time that Mr. Eaton and Miss Becker were examining it?

THE WITNESS: That is correct, sir.

THE COURT: And you saw the methods that they used except the very last with respect to Miss Becker; is that right?

THE WITNESS: That is correct, sir.

MR. RAGGIO: And I think, your Honor, on the laser examination he's indicated that he himself observed the impression of the price, where the price tag was.

THE WITNESS: Yes, sir.

THE COURT: They may have -- did you call it to their attention? Was there any discussion of that?

THE WITNESS: There was a large amount of discussion and photographs were taken.

MR. SHAW: Your Honor, may I inquire just on this limited phase?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. SHAW:

Q Mr. Moore, the removal of the last sheet and the cutting of that small portion of the vinyl flap and the slitting open to remove the cardboard on the inside, that was all done after you were asked for your agreement on that, was it not? I mean you agreed to those proceedings?

A Yes, sir.

Q Did you do any tests of your own on any document for the defense in this case?

A On this document I did not.

Q Did you do any tests of your own on any document for the defense in this case?

A I have done some earlier tests on some other exhibits, yes.

Q What exhibits were they?

A They were to the best of my recollection a sheet, several sheets of lined yellow paper or lined paper.

Q Several sheets of lined paper. Was it yellow paper?

A I'd to have refresh my memory with my notes.

Q Were there dollar amounts on those papers that you recall?

A To the best of my recollection, yes, sir.

Q Do you recall any of those dollar amounts?

A No, I don't. I'd have to refresh my memory.

Q Well, do you have something in front of you that would refresh your memory?

A Yes, I have information in my case folio.

Q Would you refresh your memory?

MR. RAGGIO: Your Honor, I realize this is out of the presence of jury but I would indicate that this is certainly beyond the scope of the examination.

THE COURT: Well, clearly it's beyond the scope but if he did perform any tests on anything, why there's an equal right on the part of both the Government and the defense to get the results of the test.

THE WITNESS: I have office machine copies of some of the exhibits that I examined previously.

BY MR. SHAW:

Q May I see those? There appear to be eight pieces of paper that you handed me that are legal size and appear to be yellow pages that appear to be copies of what were yellow pages; is that true?

A Yes, sir. Some of them are duplicates, however.

Q Did you reach any conclusions from your tests of any of these documents?

A Yes, sir, if memory serves me.

Q What conclusions did you reach?

A If I might refresh my memory?

Q Yes.

A One moment. Bear with me, please. I'm sorry, your Honor, I wasn't originally prepared to testify. It's been a long time since I examined that.

Q When did you conduct the examinations?

A If you will give me a moment?

Q Okay.

A I originally conducted the examinations on those documents back in March of this year. I did not prepare any formal written report. I arrived at a number of different evaluations on a number of different aspects on these documents. They pertain basically to the -- that there were different inks involved in certain portions of those documents.

Q Were you able to determine the time or dates that any of the entries were placed on any of the documents?

A No, sir.

Q Were you able to determine that any of those entries could not have been placed on the documents at the time that they purported to be placed on the documents?

A I did not evaluate for that.

Q The purpose then of your tests were just to determine whether they were different inks?

A Basically that, yes, sir.

Q Were any of the tests that you have performed performed for any other purpose?

A I examined these documents for indentations, found no indentations of significant value. Basically those are the types of examinations I conducted on them.

Q So the tests were performed to determine indentation and also to determine whether or not there were different inks appearing on the pages?

A Yes, sir.

Q You were unable to determine the order that the ink was placed on the pages?

A That is correct, sir.

Q Did you reach any conclusions regarding the legitimacy of the entries on those pages?

A Aside from that some of entries appeared to have been placed on there at different times rather than necessarily at one sitting, that there appeared to be multiple authors involved and several additions that were made by other than the person who wrote the majority of the entries.

Q Were there any indentations that you found that reflect writing that did not appear in ink on the pages?

A Not that I could discern, sir.

MR. SHAW: That's all I have. Thank you, your Honor.

THE COURT: Well, there's no question, gentlemen, that at least ultimately Mr. Moore would be willing to testify as to what occurred in Rockville, Maryland and also occurred whenever the test was conducted on the other exhibit which was likewise pursuant to my order that each side would have one or more representatives present to determine, to be at the test of the documents. Both of these I assume will come into evidence in due time. Now the only question is they are not in evidence now and technically, of course, the Government is correct.

But what difference does it make if we've got an assurance from Mr. Goodman and Mr. Raggio that the Defendant does intend to take the witness stand?

MR. RAGGIO: Yes, I represent that to the Court, your Honor, and we would understand that the offers would be subject to be stricken if they weren't properly linked.

MR. SHAW: That's the problem. I don't know whether we're hearing that the Defendant is going to take the stand or if they were offered to strike.

MR. RAGGIO: The Defendant will take the stand, your Honor. I represent that to the Court.

MR. SHAW: Your Honor, we would offer to stipulate that the entries in that book could have been made at the times that are stated therein. I believe that's Miss Becker's conclusion and all this witness would be testifying to --

THE COURT: You had plenty of time to stipulate two days ago, three, four, five days ago when I was asked to telephone Miss Becker.

MR. SHAW: Now the question for the stipulation is --

THE COURT: You're just like the Defendant, you don't stipulate.

MR. SHAW: I didn't have an opportunity to speak with her. I had not spoken with her as of that time and also I believe the stipulation you requested that it was authentic, he couldn't testify that it was authentic, only that it could have occurred. We will stipulate to her testimony in that regard.

THE COURT: Gentlemen, I can't stop -- these stipulations, number one, unless they are agreed to by the Defendant himself weren't worth the paper they are written on. Now I am sorry you gentlemen aren't inclined to stipulate to anything in this case, but be that as it may, I've ruled that Miss Becker's testimony is admissible. I don't know why Mr. Moore's testimony is not admissible. What are we accomplishing by holding these witnesses here in view of the statement that Mr. Claiborne will testify and these exhibits will be presented?

MR. SHAW: I haven't heard a response to my offer. I guess there's no acceptance.

MR. RAGGIO: Your Honor, we respectfully do not agree to the stipulation. We think we are entitled in the same manner that the prosecution has been entitled to present its case with its full import and we feel that these witnesses --

THE COURT: You've given your answer.

MR. RAGGIO: Thank you, your Honor.

MR. SHAW: We would also object to that testimony. He did not perform the test himself. It's merely cumulative in raising the false imprint because these entries were made that makes it --

THE COURT: I don't think it's of any consequence to this jury why they were tested. I'm perfectly willing to take the responsibility that I ordered tests to be conducted but not necessarily on behalf of the Government, not necessarily on behalf of the Defense, because when I drew the order, anybody can look at the order, I made it perfectly clear that both sides were to have an equal opportunity.

MR. RAGGIO: Your Honor, that's the very reason I strenuously followed the questioning I did.

MR. SHAW: The testimony here, we would agree that Mr. Moore's testimony would be relevant with respect to the procedures that he observed being used that Ms. Becker will testify to which is the ink analysis. Now for him to testify that all these other things that were done that he's going to testify to is totally irrelevant.

THE COURT: Well, Mr. Shaw, he testified as to what Mr. Eaton did. The Defendant hasn't asked Mr. Eaton to come here. I left to you the discretion of whether you wanted Mr. Eaton here and I don't know what you're doing about that.

MR. SHAW: He's not going to be here because he didn't reach any results and that's why neither side needs him.

MR. RAGGIO: We certainly have an obligation to the Court and jury to explain what has happened to this exhibit and that's really the purpose of those questions and also we observed the imprint of the price tag on it. Those are quite important to our case.

THE COURT: The imprint of the price tag might be, I don't know.

MR. RAGGIO: Also to indicate that there has been some physical change in alteration in the exhibit.

THE COURT: That was done with Mr. Moore's approval.

MR. RAGGIO: I understand, your Honor, but I want to be able to explain to the jury through his testimony that that exhibit has now been opened up.

THE COURT: I understand. I think that's pertinent. Well, now I'm going to let him testify but why, Mr. Shaw, do you become so stubborn that you worry about when he testifies to it?

MR. SHAW: Your Honor, I don't think I acknowledged your question. I think with the understanding that Judge Claiborne will testify we don't have a problem with that.

THE COURT: All right. We will permit his testimony, then, and take him out of order and I will tell the jury that he's being taken out of order. Call the jury.

MR. RAGGIO: Your Honor, this has been marked in the first trial by a number 47. Would it be proper to offer the same number or to have it changed for this trial?

MR. SHAW: Excuse me, Bill, we have to because of our choice.

THE COURT: There won't be that many exhibits but that's up to you all. You can keep the same numbering.

MR. RAGGIO: Excuse me, your Honor, we would ask to retain the same number, 47, because it will tie to some other offers.

THE COURT: All right. It may be remarked for identification purposes at this time as Defendant's Exhibit 47.

(Defendant's Exhibit 47 was marked for identification.)

THE COURT: Members of the jury, we are permitting the testimony of this witness at this time in order that he may go about his way and there's another witness that may be introduced. Actually the procedure would have been waiting until one or two exhibits came into evidence before we actually considered his testimony. But exercising some discretion on my part I see no reason. It has been stated that the exhibits will be introduced and that Judge Claiborne will testify in the case and at that time the exhibits will come in.

MR. RAGGIO: Thank you, your Honor. The defense appreciates the accomodation of the Court.

DIRECT EXAMINATION (Resumed)

BY MR. RAGGIO:

Q Mr. Moore, I want to show you now what has been marked for identification purposes as Defendant's exhibit 47. May I approach the witness, your Honor? Mr. Moore, have you seen that exhibit before?

A Yes, sir, I have.

Q When and where did you first see that exhibit?

A On the morning of the 27th of June of this year at the research laboratory at the Bureau of Alcohol, Tobacco and Firearms in Rockville, Maryland.

Q Is that the Bureau of the Department of Treasury?

A Yes, sir, it is.

Q Is that known as the National Laboratory Center in Rockville, Maryland?

A Yes, sir, it is.

Q It's operated by the United States Government?

A Correct, sir.

Q How did you happen to be there at that time?

A I was there in the passive acting as the witness for the Defense pursuant to an order by Judge Hoffman.

Q That was an order for this exhibit to be examined and to have representatives of both the prosecution and the Defense present; is that correct?

A Yes, sir.

Q Over what period of time did that occur?

A I was present on the 27th and the 28th. To my knowledge the examination, a portion of the examination continued after my departure.

THE COURT: That was with your consent, was it?

THE WITNESS: Yes.

BY MR. RAGGIO:

Q During the time that you were present for the examination who else was present?

A For the prosecution was the prosecutor, Mr. Steven Shaw, an IRS agent, Special Agent Don Skelton, a representative from the Michigan State Police Crime Lab, Detective Lieutenant Speckin. Also present for the Alcohol, Tobacco and Firearms laboratory was their chief, Mr. Dan Gardner, a question documents examiner by the name of Claude Eaton and an ink chemist by the name of Joanne Becker.

Q Were you the only representative of the Defense present during these tests?

A That is correct, sir.

Q Who had possession of this exhibit when you first saw it?

A Mr. Skelton brought it into the laboratory on the morning of the 27th.

Q To your understanding that was pursuant to Judge Hoffman's order?

A That is correct, sir.

Q During the time that you were present what type of examination, examinations, if any, were made of this particular exhibit? And let me ask as a preliminary of that question, generally describe what this exhibit is.

A Yes, sir. This exhibit is a vinyl binder that's called I believe a pad folio. It has an insert that's a legal pad that originally contained 50 sheets of paper.

Q During the time that you were present what type of examinations if any were made of that particular exhibit?

A The document examiner, Mr. Claude Eaton, examined the binder and the pieces of paper inside in a legal pad under the microscope, he examined it by infrared and ultraviolet lighting and he examined it on a piece of ESDA.

Q Is that ESDA?

A Yes, sir.

Q What does that stand for?

A Electrostatic Detection Apparatus, which is nothing more than an instrument that is used to visualize indentations on documents.

Q Any other type of examination?

A Yes, sir. In Mr. Eaton's presence this document was taken into the fingerprint section where the fingerprint man, Mr. Ben Wilson, examineed it under an argon ion laser and he also put it in a fuming hood with super glue.

Q Any others?

A Yes, sir. Miss Joanne Becker, who is the ink chemist, examined this document under the infrared and ultra violet lighting and she also took some small samplings of the different inks that were examined in this pad.

Q Are there some pages in the pad on which writing appears?

A Yes, sir, I believe maybe the first six or seven pages have writing.

Q Do you want to count the pages that have writing on them?

A Actually the first nine pages have writing on them.

Q Was there any physical alteration made of the exhibit during the time that you observed this process?

A Yes, sir, several different alterations to the document.

Q Would you describe those?

A Yes, sir. The back sheet in this pad was removed, actually prior to its introduction into the laboratory the back two sheets had already been removed and were not present. Then the third from the last sheet was removed and retained there at the laboratory.

Q So that actually in the course of time the back three sheets were removed; is that correct?

A No, sir, only one was removed there in the laboratory. Sometime prior two other sheets were missing.

THE COURT: Were there any writings on those that you could observe?

THE WITNESS: On the sheet that was removed in my presence there was no writing. It was simply retained for any comparative paper analysis. Also at the top of the binder several alterations occurred. On the inside of the back flap a little corner was cut out of this document for the same purpose I believe that the paper was taken for any subsequent examinations that might be conducted on the binder portion.

BY MR. RAGGIO:

Q Does that appear to be a vinyl material?

A Yes, sir, it does.

THE COURT: And that was with your permission?

THE WITNESS: Yes, it was.

BY MR. RAGGIO:

Q Were all of these changes that you're describing made with the consent of all persons present?

A Yes, sir. On the each side, inside of the binder they were slit open with a scalpel so that the inside cardboard inserts could be examined and the ink examinations included taking some very small plugs of about 24 different samples.

Q That would be Miss Becker who did that?

A Yes, sir.

Q Took samples from the ink writing on those pages?

A Yes, sir, she did using a small hypodermic needle and actually punched several small holes in the page.

Q So when you first saw the exhibit as Mr. Skelton brought it, is it fair to say that it was not cut up on the edges and there didn't appear to be the scotch tape? There appears to be some scotch tape holding it together.

A Yes, sir. The scotch tape has been added after they were sliced open.

Q Were you allowed -- now this covered two days while you were there, do I understand?

A Yes, sir.

Q Were you allowed to be present during all of these examinations?

A With two exceptions.

Q What two exceptions?

A I was present during all conversations and the first exception occurred on the first day, I believe.

MR. SHAW: Excuse me, your Honor, I don't believe it's been responsive. I believe the question was were you present during all of the examinations. Perhaps I misunderstood him.

THE COURT: The only question was whether or not he was present during any testing of the particular exhibit. That's all we have.

MR. RAGGIO: Yes, that's what I was interested in.

BY MR. RAGGIO:

Q Were you allowed to be present during all of this testing that occurred on the exhibit?

A Yes, sir, during the testing.

Q Getting back to the examination that was made by Mr. Eaton, you mentioned the ESDA examination. Was there in your presence anything significant noted during the course of that examination?

A There was nothing that was noted during that of significant value.

Q To your knowledge what was the purpose of Mr. Eaton's overall examination?

MR. SHAW: Objection, your Honor.

THE COURT: Well, he has described, he may describe what Mr. Eaton did that he observed.

BY MR. RAGGIO:

Q Do you understand the question? What was the purpose of Mr. Eaton's examination in performing these functions?

MR. SHAW: Objection, that was not the Court's question. What he observed performed, not the intent of somebody else's mind.

MR. RAGGIO: I'll ask another question.

BY MR. RAGGIO:

Q You said nothing significant was noted during what you termed the ESDA examination?

A That is correct.

Q You also said you were present during the argon ion laser examination? I'm going to shortcut it.

A Yes, sir.

Q What if anything was noted during that examination of the exhibit?

A A portion of the front cover sheet of the vinyl binder luminesced and it's an area that's just above the center of the page in the center about two inches below where the Defendant's exhibit tag is and here is the scan area right where I'm circling with my hand, that area luminesced and bore an indication that a price tag was affixed on that document and the price was $1.38.

Q At the time that price tag was made, there was no price tag on that cover actually?

A That is correct.

Q What did that indicate then to you as a question documents examiner with Mr. Eaton?

A It appeared that at one time a price tag in the amount of $1.38 has been affixed right to the face of that document and had been removed.

Q Why would that leave such an impression when viewed under laser?

A The technical answer to that I'm not sure that I'm qualified to answer but I believe that it has something to do with the transfer of the luminescent properties of the price tag, the dollar amount, and possibly through the adhesive on the back of that and leaching of that amount into the face of the vinyl binder.

Q Was that noted in the presence of everyone at that time?

A Yes, sir.

Q Were you able to observe that yourself?

A Yes, I was.

Q Were you present also -- I think you already have answered this, were you present when Miss Becker made her examination?

A Yes, sir. Through almost all of it, yes, sir.

Q When she took the samples?

A Yes, sir.

Q Then you weren't present after the exhibit was returned to Mr. Skelton?

A No, sir, it was returned in the afternoon of the 28th and I departed shortly thereafter.

MR. RAGGIO: Nothing further, your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION (Resumed)

BY MR. SHAW:

Q Mr. Moore, Mr. Eaton was one of the examiners there; is that correct?

A Yes, sir, he was the question documents examiner.

Q He wasn't able to reach any conclusions one way or another about that, was he?

A To my knowledge, sir, he did arrive at some conclusions but they were not definitive.

Q The changes that were made to the book that you've testified to were made with your agreement and in some cases with Mr. Raggio's agreement; is that correct?

A That's correct, sir.

MR. RAGGIO: Excuse me, what was the last question? May I ask that it be read?

THE COURT: I beg your pardon?

MR. RAGGIO: May I ask that the last question be read?

THE COURT: Changes were made, the changes that were made in the folio or exhibit were made with his permission and he mentioned your name.

MR. SHAW: And with Mr. Raggio's permission.

MR. RAGGIO: I have no problem with that, your Honor.

THE COURT: Thank you. Was Mr. Raggio present? You didn't mention him.

THE WITNESS: Mr. Raggio was not present.

MR. RAGGIO: I don't get to travel, your Honor.

REDIRECT EXAMINATION

BY MR. RAGGIO:

Q Mr. Moore, I'm not sure of Mr. Shaw's question with respect to Mr. Eaton with reference to the number of the $1.39 on what has been a price tag --

THE COURT: $1.38 I thought it was. The price has gone up.

MR. RAGGIO: Inflation, your Honor.

BY MR. RAGGIO:

Q With respect to that, were you present insofar as Mr. Eaton's observation was concerned?

A Yes, sir.

Q Did you intend to answer Mr. Shaw's question as to that item that Mr. Eaton didn't reach any conclusion?

A That was a conclusion that Mr. Eaton arrived at, yes, sir.

Q That was his conclusion?

A   Yes, sir.

MR. RAGGIO: Thank you.

MR. GOODMAN: No further questions.

THE COURT: Thank you, Mr. Moore, you may be excused. Who is the next witness?

MR. RAGGIO: Miss Becker, your Honor.

THE COURT: The court will make the same ruling with respect as to Joanne Becker, the next witness. Members of the jury, you've heard her name mentioned by Mr. Moore. We're taking her out of turn and in due time this exhibit will undoubtedly come into evidence.

I suspect we better take a break. The jury has had their break but we haven't had our mid-morning break. Members of the jury, take a ten minute recess.

(A short recess was taken.)

THE COURT: Gentlemen, I've asked my law clerk to give you a copy of a letter that I received this morning. For your information I see no reason to put it into the record. It's not worthy of comment.

Call the jury, Mr. Marshall.

JOANNE L. BECKER, DEFENDANT'S WITNESS, SWORN

THE COURT: Ladies and gentlemen of the jury, the witness on the stand has been duly sworn and, Mr. Raggio, you may proceed.

DIRECT EXAMINATION

BY MR. RAGGIO:

Q Would you state your name or have you stated your name? Please state your name and spell your last name.

A Joanne L. Becker, B as in boy, e-c-k-e-r.

Q Is it Miss Becker?

A It's Miss Becker.

Q Where do you reside?

A I reside in Germantown, Maryland.

Q What is your business, profession or occupation?

A I'm hired by the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms. It's a laboratory that's located in Rockville, Maryland.

Q How long have you been with that bureau?

A I've be with the bureau since December of 1980.

Q How long have you been in your present capacity at the laboratory?

A In my present capacity as a forensic chemist I have been there, let's see, since December of 1982.

Q What is a forensic chemist?

A The forensic chemist work in the particular analysis I do is ink and paper analysis. I look at inks and papers, inks that may be on certain documents and try to determine the first date of manufacture of that ink or paper.

Q What is your formal education and training?

A I have a bachelors degree in biology from Lafayette

College which is located in eastern Pennsylvania. I received that degree in 1977. My post-graduate work, I started at Georgetown University in a Masters degree program and I also have a Masters of forensic science degree from the George Washington University in Washington D.C. and I received that degree in 1981.

Q What special training have you had provided to you in forensic ink and paper analysis?

A Beginning in September of 1982 I was directly training with the chemist that was presently there which would be Dr. Antonio Cantow.

Q Whether you say there, you mean --

A At ATF who is presently doing --

THE COURT: ATF is Alcohol, Tobacco and Firearms?

THE WITNESS: That's a mouthful so I'll refer to it as ATF. The training that I received there was basically how to use the library that we have located at ATF. Library meaning we have contact with a number of ink manufacturers in the United States. They send us samples of their ink formulations when they change them so I was learning how to use that library, how to analyze inks and had to deal with the manufacturers.

BY MR. RAGGIO:

Q Did you have any other training provided to you in forensic ink and paper analysis?

A Yes. I have had occasion to take a number of courses since I have been with ATF. I had a gas chromatography course, a course in paper fiber analysis that was given at the Institute of Paper Chemistry and I've also taken a chemistry course, a physical chemistry course.

Q Did you also receive some training in that connection at the FBI chromatography laboratory?

A I was an instructor there actually.

Q You were the instructor?

A Yes, I was the instructor.

Q Is that what you term thin layer chromotography?

A Yes.

Q Do you have a common abbreviation for that?

A It's TLC.

Q I just wanted you to say it. It's TLC?

A TLC, yes.

Q What is that?

A Thin layer chromotography, its known as a separation technique. Any type of chromotography, it's used in chemistry to separate a compound into its component parts. With ink what I'm using the TLC for is to separate the ink into its component dyes.

Q Are you a member of any professional societies as a forensic chemist?

A Yes. Presently I'm a member of the Mid-Atlantic

Association of Forensic Scientists.

Q And have you done any additional research or taught or written any articles concerning this subject?

A In ink and paper analysis, yes, I have had occasion to do some research in trying to determine actually how long an ink has been on a piece of paper and that research was presented at the 1983 Interpol meeting in Paris, France and also at the American Academy of Forensic Scientists out in California.

Q Now have you ever had occasion to testify in court?

A Yes, I have.

Q As an expert?

A Yes, I have.

Q I think you told me you recently had your first opportunity to appear in court as a qualified expert as a forensic chemist; is that correct?

A That is correct.

Q Where was that?

A That was in district court in Houston, Texas.

Q On that occasion you did appear as an expert called by the prosecution?

A Yes, it was for the prosecution.

Q In a criminal case?

A That's true, yes.

Q Would this be your second opportunity to qualify as an expert?

A Yes, it will be.

MR. RAGGIO: Your Honor, we would offer Miss Becker now as an expert witness and note that this will make her even for the Defense so she's got a 500 batting average.

THE COURT: Don't make any speeches. Any questions on Voir Dire?

MR. SHAW: No, your Honor.

THE COURT: Miss Becker may testify as an expert.

BY MR. RAGGIO:

Q Miss Becker, calling your attention to June of this year, did you have an opportunity to examine what has been marked for identification as Defendant's exhibit 47?

A Yes, I did.

Q Do you recall the date?

A It was June 27th of this year that special agent Donald Skelton brought this notebook to the laboratory in Rockville, Maryland.

Q Did you at that time conduct certain examinations with respect to that exhibit?

A Yes, I did.

Q Can you tell us who was present while you conducted those examinations?

A Yes. There was -- as I said it was brought in by special agent Donald Skelton, Mr. Steve Shaw was there. Mr. David Moore, documents examiner was present. There was another documents examiner from Michigan State Police, I don't recall his name and also our documents examiner, ATF's documents examiner, Mr. Claude Eaton.

Q Over what period of time did you have an opportunity to make a physical examination of this particular exhibit?

A We looked at it that day that it was brought in, June 27th, and it was released back to Mr. Skelton the next day which would be June 28th.

Q Will you tell us what types of examinations which you personally made on this exhibit?

A Yes. The type of examination that I do is basically broken down into two parts, one part being a physical examination and the physical examination simply is looking at the document, noting the color of the inks that are there and the types of inks that are there. We classify them as ball point inks or nonball point inks. So the first thing that I did was page through the document, make notes on a Xerox copy of the colors of inks and the type of inks that were present.

Q Now, Miss Becker, that exhibit appears to be a pad folio, a vinyl pad folio with a yellow pad content; is that correct?

A That's right.

Q Did you do any, make any examination with respect to the vinyl pad itself?

A I did not, no.

Q Your examination was limited only to the yellow pad inside?

A That is correct.

Q You said you made, was that a visual examination?

A Physical or visual examination, yes.

Q What other type of physical examination did you make on the exhibit itself beside a visual examination?

A We use a technique that's known as infrared examination. It's also nondestructive to the document. What we were looking at is --

Q When you say nondestructive of the document, what do you mean by that?

A That we are not actually taking any samples or anything from the document itself.

Q That would be a visual inspection through the use of infrared?

A Of infrared light source, that is correct.

Q What did you find if anything as a result of the physical examination or infrared examination?

A What we use the infrared examination for is actually to determine -- it's a screening technique and it allows you to tell how many different inks you may be dealing with. If I have a case where I have a number of pages or a number of documents I can't sample every single entry and the infrared allows me to distinguish and take samples from as many different inks as possible.

Q Were you by visual examination able to look at the writing and determine the different types of ink or whether it's a ball point ink or I guess ordinary ink would be the term?

A Yes. By a visual examination you can do that. There are occasions when you may actually have to use a microscope to be able to tell if something maybe is a ball point as opposed to something that is a card rolling ball which is a felt tip that leaves a line like a ball point does.

Q Are you able to tell us what you observed as a result of your visual examination or the infrared examination?

A Yes. Based on the infrared examination I noted that there was at least two blue ball points that I could note. There was a blue felt tip ink that was used, there was a blank ball point ink that was used. There was an ink, that color was neither blue nor blank, it was sort of in between, that was a ball point ink. And there was two different types of black nonball point, one being a felt tip like your Flare type of inks and there was another that we consider a rolling ball type of ink.

Q To an expert whose qualified, that's apparent as a result ordinarily of visual examination through infrared?

A That's correct.

Q So if I understood you, you found a number of differ types of ink, either ball point, felt --

A From this examination I would say that there were at least seven different inks from that visual or physical examination of the notebook.

Q Did you then make an examination which you would classify as "destructive", I'll put that in quotes?

A We like to call it semi-destructive, not totally destructive.

Q What type of examination is that?

A That is an examination that we consider the chemical examination where we're actually taking samples of the ink from the document and if you look through this document you'll be able to see little pin holes where the samples of ink were removed. The device is like a small hypodermic needle, it acts as a bore to actually bore out these tiny little plugs of ink. So what I did is take samples from at least each page and from each different ink that I was able to see by my visual examination.

Q Is that what you previously referred to as thin layer chromotography?

A Actually this is just the sampling, this is prior to doing the thin layer chromotography.

Q Using those examples, did you use thin layer chromatography?

A Yes.

Q And that's what you term TLC?

A TLC.

Q Do you maintain in the laboratory or did I understand you to say you maintained an ink library?

A Yes, ATF has what we call a standard ink library.

Q Does it have a reputation as a standard ink library?

A To the best of our knowledge it is the largest collection of standard inks in the world.

Q Can you explain to the jury exactly what this standard ink library consists of?

A Yes. The library -- once a year we contact manufacturers of ink, be they ball points or the felt tip type of inks and ask them if they have made any changes in the formulation of that ink. If they have they send us a sample of that ink formulation. Once we have that standard from them we make what we call a scribble sheet which is actually taking that ink either in a bulk form or from a pen or whatever and actually just make a scribble sheet like you would make finger paintings or something like that. Those are the standards that we use. In that we use thin layer chromatography, take samples from our scribble sheets, run a TLC plate and find out what the component dyes are of that standard ink.

Q If you know, when did the laboratory first start compiling what you term the standard ink library?

A They first began compiling that library in the latter part of 1968.

Q If I understand you they make an effort then to obtain inks from manufacturers and if there's some change in the formulation of inks they obtain a new sample; is that correct?

A They will send us a new standard.

Q And they do that as completely as possible?

A Yes. Well, what we do is we normally send out a yearly request or a reminder to them and say since the last time you have submitted any standards, if you've made any changes, to please submit a sample.

Q So is there a likelihood that some inks you don't get in the standard ink library?

A It's a possibility, yes. But with the American manufacturers we feel fairly confident because of that yearly contact and also because of telephonic contact, I keep up pretty well with each one of the manufacturers of inks, yes.

Q You've been there since what year?

A I started in 1980. In this present position since 1982.

Q And as far as before 1980, that's your belief in your employment?

A Well, since 1968, there really have only been four people besides myself who were keeping up the library so I feel fairly confident that it was kept as complete as possible.

Q Now, Miss Becker, on the exhibit there appears to be a number of pages with ink writing on the pages; is that correct?

A Yes, there are.

Q Can you count them and tell the jury how many pages you're referring to?

A There are nine pages that have ink entries.

Q There appear to be notations on there with dates; is that correct?

A Yes, there are.

Q There are a number of notations on each page, each bearing a date and then some reference of some kind; is that true?

A That's correct.

Q Now can you tell us if you, in the course of taking these little samples or plugs, if you did that with reference to each one of the entries on that pad?

A I did not take a sample from every entry, no.

Q How many did you sample?

A I took 20 -- could I refer to my notes?

Q Yes, if you need to refresh your recollection.

A There were 23 ink samples that I took and I took one sample as a paper control.

Q As a result of your samples and the utilization of the TLC process, were you able to form an opinion or conclusion as to the number of inks, different inks that were used over the nine pages?

A Yes. Of those 23 entries that I sampled, I came up with 11 different ink formulations.

Q And in the course of making your notations did you give some letter indication to the various 11 different inks?

A Yes. That is reflected in my notes as a different ink formulation I noted as ink A or B or C, what page number that the ink sample was taken from, the corresponding dated entry and the entry that the sample was actually taken from.

Q So if I count right, then you used A through K to identify the 11 different inks?

A That's correct.

Q As a result of your -- let me ask you this: Were you able to match the 11 different inks with the known inks in your standard ink library?

A Yes. Out of those 11 there were nine of those question inks that matched up with standards in our library.

Q What about the other two?

A There were two that did not. They did not match up.

Q In other words, you didn't have two inks in your standard ink library that were known inks that matched with any of the the samples?

A That's correct.

Q Will you tell us the process by which you made this comparison, that is, with the little sample and the ink and the standard ink library, that is, the chemical process by which you make this comparison?

A Yes. Those little plugs, the ink plug samples that I took from those different entries, I take eight of those little plugs and put them in a glass vial, add a solution to them to actually extract the dyes from those little plugs and I apply them, spot them on a thin layer chromatogram. Actually it's an Eastman chromatogram plate. It is developed by putting it in a solution which is in a tank which the solvent moves up across this plate by capillary action, something like a paper towel pulling in moisture if you spilled something. So it moves across this plate and what it does is it actually separates out that ink into its component dyes. So once I run that plate I compare that plate to standard plates that we have in the library that have been run in the exact same way on the exact same type of plate and we make a listing of all those standard inks that match the question. Once we've come to that process we use a second type of plate which is a little more sensitive, it's a little more better resolution. In other words, one dye formulation may separate out into two or three spots, colored spots so what we do is we put the questioned ink and a sample from those scribble sheets and put them all on the same plate, develop the dyes and make a side-by-side comparison on one plate.

Q The entries in this exhibit which you have before you indicate having dates within the exhibit from January of 1976, January 26th of 1976 through November of 1979 and as a result of this examination which you've conducted were you able to form an opinion as to whether the various ink that you tested and found matched standard inks which were available as of the dates indicated on the exhibit?

A Yes. Of the 11 different ink formulations that I found, nine of them did match up with standards in our library that were available at those dates that are reflected in the document.

Q Now you, of course, don't know personally whether those entries in that book were made on the dates indicated?

A No, that's correct.

Q But your opinion is as to those nine that they were --

MR. SHAW: I'd object to this. Ask her what her opinion is if we need to hear it.

MR. RAGGIO: I'm trying to clarify it, your Honor.

THE COURT: Let's not lead her.

MR. RAGGIO: Okay.

BY MR. RAGGIO:

Q If I understood you, nine of those inks matched inks --

A That were standard.

Q -- that were available on those plates?

A Yes, they were.

Q And apparently two of the 11 did not?

A That's correct.

Q What's your conclusion as to that?

A As to --

Q As to the two for which you found no match.

A I could make no conclusion based on the fact they did not match any standards in our library. It could be a foreign ink that we do not have in our library. We do not have as close a contact with the foreign industry as we do with the domestic or it may be a standard that is just not in our library.

Q And with reference to any of the dates indicated on there did you find anything in your examination to indicate that the inks used were not inks available on the purported dates indicated?

A No, I did not.

Q You furnished a report on this, did you not?

A Yes, I did.

Q When did you complete your ink examination?

A The ink examination itself was completed on the 9th of July and the report was written July 10th.

Q Your report was written on July 20?

A That's correct.

Q When did you give your report to special agent Donald Skelton?

MR. SHAW: Objection.

THE COURT: What is the relevancy of all this?

MR. RAGGIO: I just want to follow through because I wanted to offer the exhibit, your Honor. It's indicated that it went to Donald Skelton.

THE COURT: Well, but the exhibit came back here, you have it now. It's marked for identification.

MR. RAGGIO: I have a copy.

THE COURT: Sustain the objection.

BY MR. RAGGIO:

Q Did you then -- do you have with you your formal report?

A I have a copy of my final report, yes.

Q Is that the report that you prepared as a result of your examination?

A Yes, it is.

Q Does that report indicate the particular inks, A through K, and does it have reference to each of these inks on the page number of the exhibit, the dates of the entries and the nature of the entries so that you can look at it and tell which inks correspond to the dates and the entries?

A Yes, I do.

Q That was prepared by you?

A It was prepared by myself, yes.

Q May I show you what I have, appears to be a Xerox copy and ask you if you will compare that. Is that a true copy of the report which you prepared and gave to Mr. Skelton?

A Yes, it is.

MR. RAGGIO: Your Honor, we'll offer this exhibit as next in order. And a copy has been I know obtained by the Government in this case.

MR. GOODMAN: If I could just look at it I'm sure we won't have any objection.

THE COURT: Thank you.

MR. GOODMAN: No objection.

THE COURT: It will be as next Defendant's exhibit.

(Defendant's Exhibit 3 was marked for identification and admitted into evidence.)

BY MR. RAGGIO:

Q Now, Miss Becker, with reference, if you can refer to your copy of it to save time. May I ask the clerk, is that exhibit --

THE CLERK: Defendant's Exhibit number 3.

BY MR. RAGGIO:

Q Reffering to that exhibit, are you able to tell from that or do you need some other reference to tell us for example which are ball point, which are felt? Do you have some other notes?

A I have some other notes if I can refer to those.

Q Do you need to refer to those?

A I think I remember what they are.

Q If you can for the jury, tell us which may have been felt pen or which may have been ball point?

A By the ink designation?

Q Yes. Use your designation A through K.

A Ink A was a blue ball point ink. Ink B was a blue ball point ink. Ink C was a blue black ball point ink. It has the characteristics of both but a ball point ink. Ink D is a felt tip, black felt tip type of marker. Ink E is a blue ball point. Ink F is a blue felt tip type marker. Ink G is a black nonball point but it's a rolling writer. Ink H is a black felt tip type marker. Ink I is a blue ball point. Ink J is a black ball point and Ink K is a black roller ball type of ink.

Q Again H and J you didn't have any comparable ink in your standard ink library?

A That's correct.

Q Now, Miss Becker, your conclusions that you've reached aren't for the purpose of indicating that these types of inks weren't available after these dates as I understand it?

A Would you repeat that again?

Q So I'm not confusing anyone, these inks that you've testified to, the nine inks were available on the reported dates I think you said?

A Yes, that's correct.

Q And of course they continued I assume to be available after those dates as well?

A For a period of time. There are a number of them that aren't available any longer.

Q Any particular ones?

A Yes, there is ink D which is no longer available.

Q That's the --

A It's a black felt tip type of ink. Well, if the manufacturer made his last batch of that in 1977, if it's the latter part I would say approximately until about 1980, it may still be available in someone's stock room or something like that, it's possible.

Q Any others?

A Yes. Ink E which is a blue ball point, that formulation was available between December of 1974 and the second week of January 1980 at which point it was changed.

Q Was that the black ball point?

A No, that's a blue ball point.

Q And that ceased in late '80?

A That's correct.

Q Those are the items with reference to ink E. With reference to entries made May 4th, '77, October 23rd, 1978, and January through November of 1979, four different entries, that's ink E; is that correct?

A Well, yes. It has six entries.

Q I think ink E is on both pages?

A Yes.

Q While you have the exhibit in front of you will you look at the exhibit and turn the pad back. At the top of the pad is there some printed material?

A As far as the manufacturer and that type of thing?

Q Yes.

A Yes.

Q Would you read that, please?

A It is a Mead legal pad and to the left and the top it has 50 sheets, below that five inches by eight inches. To the far right side I assume is some sort of product number or whatever, 59-6006. Below that is this is a Mead product.

Q Is that M-e-a-d?

A M-e-a-d, Yes. And Hallman Building, Dayton, Ohio, 45402.

Q And the vinyl pad there, is there some printing embossed on the inside cover?

A Yes, sir.

Q What does that say?

A It says a product of Westab, Dayton, Ohio, 45402, stamped with Mead, M-e-a-d, Division of the Mead Corporation and there's also a number that's stamped into the vinyl, number 33-9040.

MR. RAGGIO: Thank you, your Honor.

MR. SHAW: No questions.

THE COURT: No questions. Thank you, Miss Becker, you may be excused. We appreciate your coming.

Who do we have next, gentlemen?

MR. RAGGIO: Mr. Goebel has been summoned, your Honor.

STEPHEN CARL GOEBEL, DEFENDANT'S WITNESS, SWORN

THE COURT: Please state your full name and spell your last name, sir.

THE WITNESS: Stephen Carl Goebel, G-o-e-b-e-l.

DIRECT EXAMINATION

BY MR. RAGGIO:

Q Mr. Goebel, where do you reside?

A Minster, Ohio.

Q What is your business, profession or occupation?

A I'm products manager for office products at Mead.

Q When you say Mead, what is that?

A Mead products is a division of the Mead Corporation.

Q Where is that company located?

A Dayton, Ohio.

Q What is the nature of the corporation, what products does it manufacture?

A We specialize, our division specializes in office products, school supplies and stationary.

Q How long have you been associated with Mead Company?

A Four years.

THE COURT: Mead produces many other products but you have nothing to do with those; is that right?

THE WITNESS: That's right, your Honor.

BY MR. RAGGIO:

Q How long have you been with Mead Company?

A Four years.

Q What is your particular position with Mead at this time?

A I am products manager of the Hallman office products line.

Q Did you at our request check records of the company with respect to a certain product?

A Yes, I did.

Q Was that in reference to what I would term a vinyl pad folio and a pad?

A Yes.

Q Showing you what's been marked as Defendant's exhibit 47, I ask you if you're familiar with that particular product?

A Yes, I am.

Q Have you had an opportunity to examine personally the records of your company, Mead, and where is that, in Dayton?

A Yes, sir.

Q In Dayton, Ohio, with respect to the manufacture and distribution of these items?

A Yes, I have.

Q When did you do that?

A Originally maybe six weeks ago. But really I looked closer after I received a subpoena to appear here.

Q That was when?

A Last week, midweek.

Q Did you check the records that are kept in the ordinary course of business at Mead Company --

A Yes, I did.

Q -- in this connection? Mr. Goebel, with reference to the exhibit in front of you would you tell us how you would describe the exhibit, the name of the exhibit?

A It's a pad folio, a five by eight pad folio with legal pad.

Q Is that how it's termed in your company's records?

A Yes, it is.

Q Will you look at that exhibit and indicate the printing on the vinyl pad folio itself? Are you familiar with that?

A Yes, I am.

Q Would you read that aloud?

A It says a product of Westab, Dayton, Ohio, 45402, a division of the Mead Corporation and it has a product number, 33-9040.

Q With reference to the pad itself, would you read the printing on the top of the pad?

A It's a Mead legal pad, 50 sheets, five inches by eignt inches, a Mead product, Hallman Building, Dayton, Ohio, 45402, and then there's a product number, 59-6006.

Q With reference to that product number, having used the records of Mead Company are you able to tell us if that exhibit or, excuse me, when that particular exhibit was first marketed by Mead Company?

A This model of pad folio with these markings could have been available or was on the market as early as 1975, October of 1975.

Q Does that apply both to the vinyl pad folio as well as to the pad itself?

A Yes.

Q Are you able to tell that from the product number that appears on both the pad and on the vinyl pad cover itself?

A Yes.

Q Was that product marketed if you know as you have it, that is with the pad and the cover, vinyl cover?

A This pad folio is not sold without a pad in it.

Q There's a name on there of Westab. Is that currently in use?

A No. The Westab name was dropped -- well, the order was issued in 1983 to drop the Westab name, although that kind of a transition takes some time to implement.

Q It may take a number of years before that name is removed completely?

A Right, because of work in process and inventories.

Q In checking your records for the original year of 1975 when that was first marketed by the company, did the company have a suggested retail price?

A In 1975 -- we only suggest retail prices, we do not set them. The suggested price would have been $1.39.

Q Checking your records, did that suggested retail price on the part of Mead Company change as the years went on?

A Yes, it did.

Q From your information obtained from the records, what changes can you tell us occurred with reference to the suggested retail price for different years after that?

A It went in 1976 to $1.49, in 1977 to $1.59. I could not find any records for the next two years. In 1980 it topped $2.00 to $2.19 and then it went up every year since then. The current suggested price is $2.50.

Q In 1975 the suggested retail price was $1.39?

A Right.

Q There is no obligation on the part of the company in selling to a merchant or a retailer, however, that they adopt that particular price?

A Oh, no, no. Retailers can set whatever price they chose.

MR. RAGGIO: Nothing further, your Honor.

MR. GOODMAN: No questions.

THE COURT: Thank you, very much, Mr. Goebel, you may be excused.

Do you have a short witnesss, yes?

MR. GOODMAN: About three questions, yes, sir, your Honor.

LOUIS WYMAN, DEFENDANT'S WITNESS, SWORN

THE COURT: State your name, please, sir and spell your last name.

THE WITNESS: Louis Wyman, W-y-m-a-n.

DIRECT EXAMINATION

BY MR. GOODMAN:

Q Mr. Wyman, where do you reside?

A In Los Angeles.

Q Were you related to Sidney Wyman?

A My brother.

Q In 1972 did your brother give you a gift?

A He did.

Q Was it by way of check?

A Yes.

Q How much was the check?

A $100,000.

MR. GOODMAN: Thank you, sir.

MR. GOODMAN: No questions.

THE COURT: Thank you, Mr. Wyman, you may be excused.

THE WITNESS: Thank you.

MR. GOODMAN: Your Honor, our next witness is not as short.

THE COURT: All right,. Well, members of the jury, if you can get back by 1:15, since you're leaving at 12:00, fine. Otherwise don't rush yourselves in eating your lunch. Take whatever time is necessary and I'll see you about, between 1:15 and 1:30.

(The proceedings continued in the
absence of the jury.)

Gentlemen, do you have your requests for charges?

MS. LITTLE: We have ours, your Honor.

MR. RAGGIO: Your Honor, I'll have to have ours typed up during the noon recess, if I can, and give them to you after that.

THE COURT: All right. Let me have them when you come back, then. About how many more witnesses will the Defense have?

MR. GOODMAN: I'd say no more than five. Also as regards the jury instructions, your Honor, what we did over the weekend, whatever was left of it, is we went through the prior jury instructions and deleted those portions which would not be applicable, maybe one or two small changes and then we have one supplemental instruction which we will tender.

THE COURT: Well, I did the same thing and tentatively prepared a draft. I haven't had an opportunity to see the Government's draft, but I take it the main thing is one supplemental instruction?

MR. GOODMAN: Right, which is very brief.

THE COURT: All right. If I can have that, Mr. Raggio, as soon as you come back I'd appreciate it and drop it by the office. All right, gentlemen, if there's nothing further we will be in recess until the jury returns between 1:15 and 1:30.

(The luncheon recess was taken.)

RENO, NEVADA, MONDAY, AUGUST 6, 1984, 1:30 P.M.

(The proceedings continued in the absence of the jury.)

THE COURT: During the noon recess, ladies and gentlemen, I received a document from a gentleman in New York City who I do not know -- I don't think he's a lawyer -- written on plain stationery, but since it refers to Judge Claiborne, if you want to read it your at liberty you may do so. I have a special file back in Norfolk that I call my nut file and I file those papers away, but there's absolutely no connection with this matter at all but you're welcome to read it. I don't want to make it public, of course, a document such as that.

I note when he protested to the Second Circuit he didn't get very far.

MR. GOODMAN: Thank you, your Honor.

THE COURT: All right. Call the jury, Mr. Marshall.

JERRY D. WATSON, DEFENDANT'S WITNESS, SWORN

MR. RAGGIO: Excuse me, your Honor. I neglected to check with the secretary on the jury charge but I'll do it at the first recess if that's sufficient.

THE COURT: Do you have the supplement?

MR. RAGGIO: She was typing it during the noon hour and I neglected to stop and ask her but I'll ask her during the afternoon recess.

THE COURT: We will do it during the afternoon break. All jurors are present. All right, sir. The witness has been sworn, ladies and gentlemen of the jury. Will you please give your full name and spell your last name, sir.

THE WITNESS: Jerry D. Watson, W-a-t-s-o-n.

DIRECT EXAMINATION

BY MR. JOHNSTON:

Q Mr. Watson, where do you reside?

A 755 Appletree Court, Henderson, Nevada.

Q What is your business or occupation?

A I'm a real estate broker salesman and I own a tax practice and I own a business consulting company.

Q Where is your business located?

A 1700 East Desert Inn Road, Suite 412, Las Vegas, Nevada.

Q How long have you had a business at that address?

A Since 1979. I was in another location prior to that.

Q Will you tell us what kind of work is done in your business?

A We do bookkeeping for small businesses, we do income tax preparation, we handle audits where the IRS is inquiring about your taxes, we sell real estate and advise on investments and tax shelters.

Q Are you yourself an accountant, Mr. Watson?

A No, sir, I am not.

Q What is your particular specialty?

A Real estate.
Q Are you a broker?
A Yes, I am.
Q Are you also a certified life underwriter?
A Yes, I am.
A Would you explain to the jury what that is?
A That is a professional designation that I received from the American College of Life Underwriting in Grandmark, Pennsylvania. The gist of that course deals with advanced estate planning and finance, economics and business as well as the application of insurance products to individual needs particularly in the area of estate planning.
Q How many employees do you have in your business at the present time?
A Two.
Q How many did you have in any '81?
A I had two.
Q Do people in your office prepare income tax returns?
A Yes, they do.
Q Are you yourself involved in that activity to some extent?
A Yes, I am.
Q Mr. Watson, are you acquainted with Judge Claiborne, the Defendant in this case?
A Yes, sir, I am.
Q When did you first meet Judge Claiborne?

A When I first moved to Las Vegas I met Judge Claiborne on a number of occasions at various civic clubs and organizations within the community. He also happens to be a member of the same church that I attend.

Q Did there come a time in 1981 when Judge Claiborne came to your office?

A Yes, sir, there was.

Q Would you explain please what the circumstances of that visit were?

A Judge Claiborne had recently sold a home and was inquiring about the correct procedure for filing the income tax that might be owed as a result of a sale and exchange of his personal residences.

Q Was he introduced to you by someone?

A Yes, sir, he was.

Q By whom?

A Norma Reese.

Q Was she a former wife of Judge Claiborne?

A Yes, she was.

Q All right, sir. Following that meeting did Judge Claiborne return to discuss with you the preparation of his 1980 income tax return?

A Yes, he did.

Q Was that return subsequently prepared in your office?

A Yes, sir, it was.

Q I'm going to hand you Government's exhibit 5 in evidence and ask you if that's the income tax return that was prepared in your office?

A Yes, sir, it is.

Q Now, in connection with the preparation of that return, did Judge Claiborne furnish you with the information that was needed for the return?

A Yes, sir, he did.

Q I'm going to show you a group of sheets on lined yellow paper that's been marked previously for identification as Defendant's exhibit 41 and ask you if these are the, among the papers, at least, that Judge Claiborne provided to your office?

A Yes sir, they are.

MR. JOHNSTON: We'll offer this exhibit in evidence, your Honor.

THE COURT: All right, let it be admitted. It was not it as a Defendant's exhibit.

MR. JOHNSTON: Previously marked, your Honor.

THE COURT: Previously marked Government's exhibit 41 will now be marked Defendant's exhibit 4, the next exhibit.

MR. JOHNSTON: It was originally a Defendant's exhibit. It was Defendant's exhibit 41.

THE COURT: Do you want it the same number?

MR. JOHNSTON: I think it's simplier to keep it as the same number as long as it doesn't confuse anyone.

THE COURT: You previously said it was a Government exhibit.

MR. JOHNSTON: I misspoke myself, your Honor.

THE COURT: Defendant's exhibit 41 will be admitted as Defendant's exhibit 41.

(Defendant's Exhibit 41 was admitted into evidence.)

BY MR. JOHNSTON:

Q Mr. Watson, I'm going to show you what's purports to be an enlargement of what purports to be the first page of that and ask you if that appears to be a copy of the first page of that exhibit?

A Yes, sir, it is.

MR. SHAW: Your Honor, perhaps he'd like to move it into evidence.

MR. JOHNSTON: May we have it marked and offered into evidence?

THE COURT: Yes, that will be Defendant's exhibit 41.

BY MR. JOHNSTON:

Q Are you able to recall, Mr. Watson, whether the papers that you hold in Defendant's Exhibit 41 were provided to your office?

A I can't give the exact date but this was provided our office sometime between the first meeting with Judge Claiborne and the time the tax return was actually prepared. I would judge that to have been in April or May of 1981.

Q Did those papers remain continually in your office from the time he first turned them over to you until after the return was prepared?

A That's correct.

Q What happened to them after the return was prepared?

A They were returned to Judge Claiborne.

Q All right, sir. I want to direct your attention to the very top part of this exhibit 31-A which is the first page and ask you first whether the first item, wages as Federal Judge, 54,499.92, whether that was on the papers when Judge Claiborne brought them to your office?

A Yes, it was.

Q Would you read the next item, please?

A The next the item is income from private practice before appointed in 1978, payable and received in 1980 in the amount of $88,500.

Q Was that entry also on the paper when the papers were delivered to your office?

A Yes, it was.

Q I point out to you, Mr. Watson, that the number 88,500 on the original at least appears to be in different ink. Is that your impression?

A Yes, it is.

Q Are you quite positive that that number was on the papers when they were delivered to your office?

A   I believe that it was.

Q   Were these papers used by your office in the preparation of the 1980 return?

A   Yes, sir, they were.

Q   Were the papers subsequently returned to Judge Claiborne?

A   Yes, sir, they were.

Q   When was that?

A   As I previously stated sometime -- oh, when were the papers returned?

Q   When were they returned to him? Were they retained in your office for an extended period of time?

A   Not an extended period of time but sometime after the tax return was prepared. It is our practice to return the papers as soon as it is expedient and appropriate.

Q   Was that practice followed in this case?

A   Yes, sir, it was.

Q   Can you tell us when the return was filed? You have the return there?

A   The return was filed in June, it was dated June the 15th and it was due to be filed June the 15th of 1981.

Q   Would you look on the face of the first page and see if there's a stamp indicating when it was received by the Internal Revenue Service?

A   It was received June the 17th, 1981 in Ogden, Utah.

Q   I want to direct your attention to Schedule D of the return, Mr. Watson. Would you look at Schedule D, please? Is that in handwriting or typing?

A That's in handwriting.

Q Is that your handwriting?

A No, sir, it's not.

Q Whose handwriting is that?

A That's the handwriting of my employee at the time, Miss Charlotte Travaglia, T-r-a-v-a-g-l-i-a.

Q Is Mr. Travaglia still employed by you?

A No, sir, she's not.

Q Do you know the state of her health at present?

A Miss Travaglia has cancer.

Q Was the number $88,500 which appears on the first page of Defendant's exhibit 41 taken into account in the preparation of the Schedule D?

A Yes, sir, it was. That's the meaning of that asterisk on the side of the 88,500.

Q You're referring to this asterisk here?

A Yes, I am.

Q Is there something at the bottom of the page that's related to that?

A Yes, sir, it's item number 5.

Q Can you read that to the jury, please?

A "What I see in this business transaction is fair market value was not considered on the book sale. He had a gain from the sale because book value was used as a basis. If he has knowledge of their fair market value we can go for it on the '80 return and apply that to item number 2 income", asterisk.

Q Now would you look at Schedule D of the return, please? There's some handwriting which you said is in Miss Travaglia's hand. May I just approach the witness to point out what I want him to read, your Honor? If you are able to, Mr. Watson, would you read this portion in the upper left-hand corner?

A "Accounts receivable for law practice left upon the confirmation to Judicial U.S. Court appointment, 1978.

Q The foot note, so to speak on the yellow sheet which you read, Mr. Watson, whose handwriting is that?

A That's Mrs. Travaglia.

MR. JOHNSTON: You may cross-examine.

CROSS-EXAMINATION

BY MR. SHAW:

Q Mr. Watson, what fee did you charge Judge Claiborne for preparing his 1980 return?

A The fee for that service that year was $2,000.

Q You didn't do any bookkeeping or anything, it was strictly that individual personal tax return; is that correct?

A I didn't do any bookkeeping for him that year.

Q It was the tax return only that was $2,000?

A That's correct.

Q Did he tell you how much the previous accountant was

NSTON: Objected to as irrelevant.

COURT: Overruled if he told him.

:

he tell you?

No, he didn't. I never asked.

Did you ask?

MR. JOHNSTON: Objected to as hearsay.

THE COURT: I'll sustain that objection.

BY MR. SHAW:

Q Part of your determination, that is part of your thought process in how you determined a fee to charge Judge Claiborne and all of your clients is how much you can do for them; is that correct?

A That has a bearing on it, of course.

Q And you felt that you did a lot for him in this case I take it by charging him $2,000?

A I thought so.

Q Did he pay you the $2,000?

A Yes, he did.

Q Did he object to that fee at all?

A No, sir, he didn't.

Q Did he seem surprised?

A Not at all.

Q So I take it you went over with him what it was that you did for him to justify such a fee?

A I went over that with him before we started doing the tax return.

Q You gave him an estimate as to what it was you felt you could do for him?

A As I recall he did and he paid a retainer.

Q What was the retainer?

A I believe it was a couple hundred dollars.

Q Did you give him an estimate at that time as to how much of a refund he was going to get?

A No, I don't believe I did.

Q That certainly would be probably the most important fact to a taxpayer in determining what you could do?

A It was virtually impossible to give the man an estimated refund by looking at this superficial material.

Q When you did you gave him the $2,000 estimate?

A I invoiced him for the $2,000 at the time I delivered his copies of the tax returns.

Q So you had an interest in showing off to him all the good work you'd done for him to justify that $2,000?

A Not as I recall any interest in showing off.

Q But you were proud of it to be able to get him such a large tax refund, were you not?

A Perfectly normal.

Q And it would be something that you would certainly want your client to know so that he would not be offended by you charging him $2,000?

A I don't really use that as a basis for determination of my fees, Mr. Shaw.

Q Well, it's a factor, though, is it not? It's a significant factor?

A You said significant, not me.

Q Is it a factor?

A It is a factor.

Q Could you tell us a little about your educational background?

A Yes. I graduated from high school, I attended a college in Altas, Oklahoma, the Atlas Junior College. I took various courses at several universities dealing with insurance. I obtained a small degree called a graduate of the life underwriters training council, parts one and two. I proceeded on to another course.

Q Excuse me. Could you take it one at a time?

A That is one at a time.

Q The course is a life insurance course?

A It's an educational course in life insurance.

Q Okay, you may continue.

A I graduated from the life underwriters training council, course one, I proceeded on to graduate from the extension of that course, course two. Then I graduated in a special life insurance training course involving the underwriting of health insurance. Shortly after that I began to attend classes toward earning my CLU designation which I subsequently earned in 1968.

Q CLU is a life insurance certification; is that correct?

A That's correct.

Q You may continue.

A Outside of that I've a attended various courses on real estate, tax application, just refresher courses you might say.

Q You have a degree from Altas Oklahoma Junior College?

A No, sir, I do not.

Q Could you tell us after you got out of Altas Oklahama Junior College, what was your first job?

A My first job after leaving Atlas Junior College was, I believe you brought it to my attention, I'd forgotten about it. I was licensed for one month with the First Pyramid Life Insurance Company at Little Rock, Arkansas. Then I became an agent with the Metropolitan Life Insurance Company in 1961. I worked for Metropolitan Life Insurance Company in various positions until March 1977.

Q Did you have any other jobs between 1960 and 1977?

A From 1977? Yes.

Q From 1977 back. I mean was that exclusively Metropolitan Life Insurance Company?

A Well, from 1960 to 1977, I worked as a grocery store clerk when I was a young boy. I worked for Kerr/McGee Oil Company in a refinery. I worked for Nox Lee Steel Company. I worked on many farms and ranches.

Q Those jobs are after you got out of junior college?

A No, this was my work career. As I recall, after that I was working for a specialty sales company while I was attending the junior college on a part-time base.

Q Is that the encyclopedia sales?

A Yes, I sold encyclopedias and I also sold a set of religious books and records.

Q What was the year you left Metropolitan Life?

A 1977.

Q When did you leave Metropolitan Life?

MR. JOHNSTON: Objected to as irrelevant. If this is going to be pursued I ask to be heard outside the presence of the jury.

THE COURT: Mr. Shaw, I believe I ruled on that at the last trial, did I not?

MR. GOODMAN: I believe the ruling went to the background as opposed to the method of termination and that's all I was going into.

MR. JOHNSTON: My record from the transcript is very clear. My objection to that question, more pointed question was sustained at the last trial.

THE COURT: Let me see the transcript of that previous examination of Mr. Watson.

MR. JOHNSTON: Let me see if I can find it. Would you like the transcript, your Honor, or would you like me to locate it?

THE COURT: Just hand it up to me. Can anyone suggest to me about what page it is rather than my having to wade through about 1,000 pages here?

MR. JOHNSTON: The testimony is labeled at the top of each page whether it's direct or cross, your Honor, and it would be fairly early in the cross-examination, I think. I don't have a page number for it.

MR. SHAW: 2692, your Honor, line 21.

THE COURT: Well, the previous question at the last trial was a little bit different. The question now is why did he leave the Metropolitan Life Insurance Company?

MR. SHAW: That is correct.

THE COURT: I will permit that but let's not follow up with the next one, Mr. Shaw.

MR. SHAW: Very well, your Honor.

BY MR. SHAW:

Q Why did you leave the Metropolitan Life Insurance Company?

A I was terminated.

Q Voluntarily?

A Involuntarily --

MR. JOHNSTON: I'm sorry, your Honor, I'll object.

MR. SHAW: I think that's consistent with the Court's ruling. I didn't get a direct answer.

THE COURT: That's consistent. Involuntarily I believe he said.

THE WITNESS: Mutual agreement.

BY MR. SHAW:

Q It was mutual agreement that you left?

A That's correct.

Q You weren't fired by Metropolitan Life Insurance Company?

MR. JOHNSTON: Objection, your Honor.

THE COURT: You said involuntarily you left. I think that's sufficient as it is.

MR. SHAW: Very well, your Honor.

BY MR. SHAW:

Q After that involuntary termination what did you do for a living?

A I was immediately appointed the general agent for the State of Nevada by the Kansas City Life Insurance Company.

Q Where was your office?

A In Las Vegas.

Q What year was that?

A 1977.

Q You were doing other work as well, were you not?

A That's correct.

Q What other types of businesses were you starting at that

time?
A I was in a company, the company that does exactly the same thing I do now, bookkeeping, tax preparation, audits, investments, business consultations.
Q A little bit of everything?
MR. JOHNSTON: Objected to and I'll ask that that been stricken, your Honor.
THE COURT: Yes. Don't testify, Mr. Shaw, ask questions.
MR. SHAW: Very well.
BY MR. SHAW:
Q I believe you testified that you first saw Judge Claiborne in roughly April or May of 1981, you first saw him professionally, I mean as a client?
A Yes. It was sometime in I would say March or April of 1981 was the first time he came to my office for professional assistance.
Q And you discussed with him at that time the tax return that eventually he decided he wanted you to prepare for him?
A That's correct.
Q Did he tell you that he made that decision in that first meeting with you or did he tell you that decision came later?
MR. JOHNSTON: Objected to on the ground of hearsay.
THE COURT: Overruled. You may answer.
THE WITNESS: Oh, I'm sorry. I believe that we

tentatively made a decision on the first meeting that my firm would prepare his tax return.

BY MR. SHAW:

Q How long was that first meeting?

A I couldn't say, that's four years ago. Probably half hour, 45 minutes.

Q Did you discuss his tax situation generally with him?

A Primarily we discussed his real estate transaction.

Q That is the sale of his residence?

A That's correct.

Q Was that of concern to him at that time?

A Yes, sir, it was.

Q Did he tell you that he had spoken with other people, other accountants concerning that matter?

A I believe he did

Q What advice did you give him about the house at that time?

A I discussed with him how you go about determining your tax liability when you sell a personal residence and you purchase another one and we discussed in general the factors that go into making that kind of a determination.

Q Did you also discuss with him his situation as having -- well, strike that.

Did you discuss with him his earlier law practice.

A I don't recall if we did on the first meeting.

Q During that first meeting did you know that he was a

Federal Judge?

A Yes, he did.

Q Did you know that he had previously been an attorney?

A Yes, I did.

Q Did you know when he closed his law office and became a Judge?

A That's correct.

Q When was that?

A When did I know that?

Q No, when was the date that he terminated his law practice and became a Judge?

A I believe it was about September of 1978.

Q You knew that at that time?

A Yes, I knew that.

Q Did you discuss with him in that first meeting any tax consequences that he had?

A I believe there was some discussion. I couldn't testify exactly what that concerned but it's entirely possible that we discussed some aspect of his law practice and what he might have done with it.

Q Were some aspects of that law practice the tax consequences of it having been closed two or three years earlier?

A Ultimately on this tax return there was some consequences of closing that law practice.

Q Before we get to ultimately, what about that first meeting?

A It seems to me like that discussion came up in one of our later meetings.

Q How many meetings did you have with him?

A I can't recall. I think I previously testified to more than three and less than six.

Q How about your present memory?

A I would say the same. I can't remember exactly how many meetings we had but it was more than three and less than six.

Q Were all of those meetings in your office?

A No, they were not.

Q How many were in your office?

A I couldn't give you an exact answer, Mr. Shaw.

Q Give me an estimate.

A Beg your pardon?

Q Give me an estimate if you could, please. Half of them?

A One or more.

Q Where were the other meetings?

A Well, we talked on the phone and I believe I went to his chambers on one occasion. I can't remember specifically at this time how many times I went to his office or he came to my office or how many times we talked on the phone.

Q Your statement of three to six meetings included telephone conversations?

A Yes.

Q So it was three to six total contacts you had with him?

A Correct.

Q Do you recall --

THE COURT: It was more than three or less than six it had to be either four or five, wouldn't it?

THE WITNESS: Could have been, your Honor. I just can't remember exactly how many meetings we had.

MR. SHAW: Thank you, your Honor. I was working on that.

BY MR. SHAW:

Q Did you write Judge Claiborne a letter after that first meeting you had with him?

A Yes, I did.

Q Let me show you what's been marked as Government exhibit 47 which appears to be a letter with the letterhead Creative Tax Planning, April 6, 1981. Is that a letter that you wrote to him?

A That's correct.

Q Who is Creative Tax Planning, by the way?

A Creative Tax Planning, it's the name under which my company did business.

Q Was that name on your door?

A Yes, it was.

Q And it was on your door at the time Judge Claiborne walked into it?

A I believe it was.

Q Your company is known by other names as well; is that right?

A It has been.

Q What other names?

A Let's see. We have been, my first name was PBI Tax Control. Then I changed it to Lamb/Watson Consulting. And then I changed it to Creative Tax Planning.

Q But the name --

A And now I call it Creative Tax and Business Planning.

Q You're creative in both areas now?

A I feel so.

Q The words Creative Tax Planning, though, were visible on your office door as Judge Claiborne walked into it in early 1981 into your office?

A I've got a sign on that office door and I can't remember exactly when I bought it.

Q But you were using that name as your business name in the spring of 1981; is that correct?

A April of 1986 I had letterhead that displayed that name. I don't remember when I put the sign on the door.

THE COURT: 1986?

THE WITNESS: 1981.

THE COURT: I didn't think we'd gotten to that stage yet.

BY MR. SHAW:

Q Were you listed in the telephone book as Creative Tax Planning in the spring of 1981?

MR. JOHNSTON: Objected to as irrelevant, your Honor.

THE COURT: Overruled.

BY MR. SHAW:

Q You may answer the question.

A I don't know. I've been listed in the phone book in seven or eight different places and I really couldn't swear. I'm listed in enough places that I hope nearly anyone can find me in any event that they wanted me.

Q Were you at that time listed in the yellow pages as a tax preparer?

A Yes, tax preparing and bookkeeping and business consultation as I recall.

Q And insurance and real estate?

A Insurance. I don't think I was listed as real estate.

Q Now if we could go back a moment to exhibit number -- is that 49 in front of you, on the folder?

A Exhibit number 47.

Q That is a letter that you wrote to Judge Claiborne on or about April 6th, 1981?

A That is correct.

Q That was written to him after you had the first meeting with him in your office?

A That is correct.

Q And it was written to him to memorialize certain information that you discussed concerning the preparation of his 1980 taxes?

A That's correct.

Q Is that your signature at the bottom of that?

A Yes, it is.

Q Signed Jerry D. Watson, CLU?

A That's correct.

Q So you're identifying yourself on this letter to Judge Claiborne as being a life insurance underwriter?

A That's correct.

MR. SHAW: I'd move exhibit 47, your Honor.

MR. JOHNSTON: No objection, your Honor.

THE COURT: Do you wish to keep the number the same?

MR. SHAW: I believe that's a new number for the Government.

THE COURT: I beg your pardon, let the record reflect it is admitted.

(Defendant's Exhibt 47 was admitted into evidence.)

BY MR. SHAW:

Q This is addressed to lawyer Harry E. Claiborne at his chambers in Las Vegas; is that correct?

A That's correct.

Q Could you read the third paragraph?

A "The possibility of taking a loss on your business looks good. We will assemble supporting information with your help to determine the amount of the loss".

Q Does that refresh your recollection any further as to the extent that you have discussed with him in that first meeting the possibility of taking a loss on his business?

A As I previously testified I do believe that that was touched upon in the first meeting and this letter just affirmed that what I told you was correct.

Q Did he ever write you a written response to this letter?

A He didn't write to me a written response. He brought me in boxes and reams of material.

Q You were asking him in this letter that you needed some supporting information about writing off the business in 1978; is that right?

A As well as supporting information in preparation for the entire return, Mr. Shaw.

Q No, I'm directing your attention to that paragraph right now.

A Yes, in addition to that.

Q It's part of the information he gave you. He gave you a number of his earlier tax returns, did he not?

A That's correct.

Q Do you recall the years of those returns that he gave you?

A Well, in the letter it says that we requested 1973 through 1979.

Q Did he give those to you?

A And as I recall he gave me those.

Q I take it that would include 1978?

A That would be included.

Q Did you read the 1978 return?

A You mean thoroughly go through it a page at a time?

Q Did you look at it at all in the preparation of Harry Claiborne's return?

A I had looked at the tax return.

Q You looked at it at that time, did you not, the spring of 1981?

A Sometime during that time frame.

Q Looked at it for the purpose of assisting yourself and Judge Claiborne in the preparation of the '80 return?

A I looked at it for the purpose of familiarizing myself with it to some degree prior to the time I turned it over to my paid tax preparer.

Q You weren't looking at it because you had nothing better to do; you were looking at it for the purpose of preparing the '81 return?

A As a form of information, yes.

Q Let me show you Government exhbit 2 and ask you if you would review the schedules which are attached to the back of the '78 return?

A Yes.

Q Does that not indicate to you that in 1978 he had written off all of the books and the equipment and the furniture from that law office that he closed in 1978?

A Well, we didn't write them off on the 1980. We gave some importance to them.

Q I'm asking you does that indicate that in 1978?

A This indicates to me that he had taken a prior loss on some assets of his business.

Q Does it indicate that he took a prior loss on all of the assets of his business?

A I don't think so.

Q Does it say complete library in that schedule?

A A complete library would certainly not consist of all the assets of a law practice.

Q Does it say complete library?

A I don't see where it says that.

Q Did you discuss with him whether or not there was any equipment or furniture or library books left that had not been written off? Did you ask him that question?

A I don't know that I did.

Q Did you assume that there were certain items that had not been written off in 1978?

A Yes, I assumed that.

Q Did you assume that even after you had read the 1978 return?

A Yes.

Q What information did Judge Claiborne give you to assist you in determining the value for the write off of his business?

A He gave me -- we had verbal conversations as to -- that was not the focal point of Judge Claiborne coming to my office, was the law practice.

Q Please, Mr. Watson, what information did he give you to assist you in writing off his business or taking a loss on his business?

A We had a verbal discussion about the various factors of business including offers that I had received from two different attorneys that were interested in buying the property.

Q Let's a take them one at a time, if I may, Mr. Watson, and we'll get back to the others. He told you some offers he had received from people that wanted to purchase his law office?

A That's correct.

Q And that was one of the pieces of information he was giving you in response to this April 6th letter that you would be able to prepare his '81 return?

A That's correct.

Q Now who were the attorneys that made him, offers to purchase his law practice?

A Annette Quintana and James Brown.

Q Those were his associates at the time that he took the bench?

A They were his employees.

Q Now according to Judge Claiborne, what did these two attorneys offer him for the business?

MR. JOHNSTON: Objected to as hearsay.

THE COURT: It's not hearsay if it came from Judge Claiborne. I will admit it.

THE WITNESS: As I recall the figure was around $700,000, 700 or 750,000.

BY MR. SHAW:

Q According to Judge Claiborne was that an offer that they had made to him in writing or was that an oral offer?

A I was under the impression that it was in writing since attorneys tend to conduct their business on that basis.

Q Did Judge Claiborne ever show you this written $750,000 offer?

A No, sir, he did not.

Q Did he tell you that, that is did Judge Claiborne tell you of any other offers that he received in 1978 for the purchase of his law office?

A Yes, sir, he did.

Q What offers were those?

A Mr. John Manzonie, an attorney who I personally know in La

Vegas, dealt with Judge Claiborne and as I recall I discussed it with Mr. Manzonie myself.

Q Did Judge Claiborne tell that you Mr. Manzonie had made an offer for the purchase of his law office?

A He told me they had negotiated.

Q Judge Claiborne told you they had negotiated?

A That is correct.

Q According to Judge Claiborne what happened to those negotiations?

A Those negotiations fell through just a few days prior to the time he had to divest himself of his practice in order to take the appointment to the bench.

Q According to Judge Claiborne what if anything did Manzonie offer for his law office?

A I believe that --

MR. JOHNSTON: Excuse me, your Honor, this is hearsay upon hearsay. I'll object to this. We're getting into what Judge Claiborne said somebody else told him.

MR. SHAW: That's the same thing.

THE COURT: Whatever the conversation was between Mr. Watson and Judge Claiborne would be admissible.

THE WITNESS: As I recall the figure that they were negotiating on for the law practice was a half million dollars.

BY MR. SHAW:

Q Did Judge Claiborne tell you that Mr. Manzonie offered that?

A As I recall I talked to Mr. Manzonie --

THE COURT: Just answer the question.

BY MR. GOODMAN:

Q The answer is yes, it was Mr. Judge Claiborne that gave you that information?

A I just said yes.

Q Was there any other information that Judge Claiborne gave you to assist you in preparing the 1980 tax return with respect to taking a loss on his business?

A Since I have made many calculations many times in evaluating businesses Judge Claiborne and I had discussions about the factors of a law firm that make it valuable. Would you like me to elaborate on that?

Q I'd like you to answer the question as to whether or not Judge Claiborne gave you any other information to assist you in that endeavor.

A We had verbal discussions.

Q And during those verbal discussions he gave you information to assist you; is that correct?

A We discussed the various aspects of his practice, that's correct.

Q What information did he give you?

A As I recall we discussed the fact that he had a large amount of accumulated briefs, he had an extensive file of phone numbers. His phone had been listed under one number for several years which meant that a large segment of the population of Las Vegas knew who he was and knew his phone number, that he had accumulated points and authorities and legal papers which an attorney of course can use over and over again as similar cases come up. We discussed the value of his cases that were pending at the time, not a dollar value but that they had a value, and we discussed accounts receivable.

Q So all of this information he gave you for purposes of helping assist you in preparing his return?

A That is right, we discussed all of those areas.

Q Did he also mention to you a contribution that he had made with some of the law books when he became a Judge?

A Yes. He had told me he had disposed of some of the assets of the firm.

Q Did he say that he donated those law books to the University of Hawaii?

A As I recall he donated them to a university and I think it was university in Hawaii.

Q That information that Judge Claiborne gave you was also factored by you in your determination of how to take a loss on his practice?

A That would have been a factor.

Q Was another factor that was going to be plugged into the loss of this business the money that he'd received in fees during the year 1980 that he had earned before he became a Judge?

A That was the accounts receivable.

Q You had discussed that with him also?

A Well, not particular dollar amounts. We had just discussed those things I told you as factors of value into the business as a going concern.

Q And accounts receivable was one of those factors?

A I believe that's correct.

Q Now approximately when did your office complete its work on the preparation of Judge Claiborne's 1980 tax return?

A That would have been sometime shortly prior to June the 15th, 1981.

Q Do you say that because Judge Claiborne's return is dated June 15th, 1981 on Government's exhibit number 5?

A That's correct.

Q Your signature appears below his signature, does it not?

A That is correct.

Q Would you have signed it first, however?

A Yes, I would have signed it first.

Q After you sign it is there a stamp placed over the top of it?

A That's correct.

Q And that's the Creative Tax Planning, Watson, Las Vegas, Nevada?

A That's correct.

Q So your office completed the work you believe on June 15th, 1981?

A Sometime on or before that date.

Q And you delivered that to Judge Claiborne at his chambers in Las Vegas?

A As I reflect back on that I delivered -- as I recall now I delivered a copy to him at his chambers.

Q Did you deliver a copy with the original?

A As I was thinking back on this I believe he came by and picked it up at the office and then I delivered the copy to him along with the invoice three or four days later.

Q You say thinking back on it because you have previously testified several times because you testified you delivered it to him, his tax return?

A That's correct, I delivered the return to his chambers and I had forgotten what I had delivered was a copy because I think he picked up the original in my office while he was out of town.

Q Did he sign the original with you there?

A Well, no. I was not in the office the day as I have reflected back on this. The day that he came in to pick it up I was not in the office.

Q When have you spoken to the Defense most recently in this case?

A I've just spoken to the Defense any number of times.

Q Did you speak with them this morning?

A Yes, I did.

Q With Judge Claiborne personally?

A No, I didn't.

Q With his attorney?

A Well, I mean we've had a little small talk.

Q When have you talked about your testimony most recently prior to today?

A I discussed my testimony with them last night and this morning.

Q For how much time last night?

A 45 minutes.

Q How about before yesterday, have you spoken with them a number of times in the past couple of months?

A No, I haven't spoken to them at all.

Q Is it based on your conversation with them that you now remember that you only delivered a copy to the chambers?

A It's based on my recollection of the events.

Q Recollection refreshed by conversations with them; is that right?

A I don't know that I can say it was refreshed by them or refreshed by my prior testimony or something through my prior records. As you may well appreciate I have spent a great deal of time researching my own records and my office about what I am to testify to here today.

Q What records do you have that you only recently discovered that tell you that you only gave a copy to Judge Claiborne?

MR. JOHNSTON: I'll object. It misstates the witness's testimony. He didn't say he recently discovered records, your Honor.

THE COURT: Overruled. This witness is on cross-examination.

THE WITNESS: I'm afraid I really can't say, Mr. Shaw.

BY MR. SHAW:

Q So since there are no records that refresh your recollection it was left to the conversations with the Defense that refreshed your recollection?

A Sometimes you remember things that you had previously forgotten.

Q So when you testified previously that you took the original to his chambers and went over it page by page with him, you meant you went over with him page by page in the copy?

A That's right, that would be correct.

Q And that was roughly a couple of days after he picked up the original from your office?

A Probably would be the same day the check was dated that he paid me.

Q Do you know the date that the check was dated?

A No, I don't.

Q How about your best present memory, would it have been two, three days after the original was signed?

A It seemed to me it was shortly after but I couldn't say if it was two days or a week.

Q So the copy that you went over with him, did the copy have both of your signatures on it?

A The copy that I went over with him?

Q The copy that you took to his chambers two or three days later.

A I'm sure it would have if, in fact, what I'm now recollecting he came to the office and signed it. The reason why he wouldn't have walked out with a copy is because I wouldn't have run it through my copy machine now.

Q You remember that he came over to your office to sign it there?

A I just told you that.

Q I'm wondering how you know that if you weren't there?

A It's a recollection that the thing was wrong, it's -- he picked up the return if he -- if I delivered a copy it would mean that the original was already gone so I would presume that the copy that I delivered to his chambers would more than likely have both signatures on it but I couldn't say. If you have a copy I'd be glad to look at it.

Q Was anyone else present with you in chambers when you and

Judge Claiborne discussed the copy?

A Yes. As a matter of fact there was somebody else with me.

Q Who was that?

A A former business associate of mine, Linda Lamb.

Q She's no longer associated with you?

A No, sir, she's not.

Q About how long was that meeting that you had with Judge Claiborne?

A I couldn't say. It wasn't very long. If I recall, I think he was involved in a trial and had just taken a short recess, so 15, 20 minutes.

Q You went over that with him, did you not?

A Yes. We glanced through the return.

Q Did he ask you any questions about it?

A No, sir.

Q Did he indicate to you that there was anything about that return that he did not understand?

A No, sir.

Q The return indicated I take it the size of the refund that he was going to get; is that correct?

A That's correct.

Q That item was on the copy that you were going over with him?

A I believe you have the document there in your hand.

Q Showing you Government's exhibit number 5, again this is the 1980 return of Judge Claiborne; is that right?

A That's correct. Yes, this indicates a tax refund on it.

Q In what amount?

A $20,927.

Q Was it at that same meeting in chambers that Judge Claiborne gave you or wrote out a check to you for your services; is that right?

A I believe that was the same meeting.

Q You were first interviewed by investigators in this case on March 8th, 1983, were you not?

A That's about right.

Q Did you have a conversation shortly thereafter with Judge Claiborne about that meeting?

A Within a day or so.

Q So within a day or so of March 8th, 1983 you told Judge Claiborne that the IRS was investigating him for taxes?

A (Witness nods head affirmatively.)

Q Is your answer yes to that? I mean you nodded your head and the court reporter has to hear you.

A I don't know that I told him they were investigating him for taxes. I just explained to him that they had been to my office asking him questions or asking me questions.

Q About Judge Claiborne's taxes?

A That's right.

MR. GOODMAN: Thank you, Mr. Watson.

THE COURT: Redirect?

MR. JOHNSTON: Just very briefly, your Honor.

REDIRECT EXAMINATION

BY MR. JOHNSTON:

Q Mr. Watson, when you took the copy down to Judge Claiborne's chambers you say you think that was during a recess?

A I was under the impression that trial was going on at the time I took it down there because it seems to me it was like about 2:00 o'clock in the afternoon, it was in the afternoon and I think he was involved in a trial on that day.

Q Do you remember how long, approximately how long he was in the office with you?

A Couldn't have been any more than 15 or 20 minutes.

Q Whether you went in on that occasion did you go through the return page by page and explain each item and each page to him?

A No, sir, I did not.

Q Your testimony I think was that you glanced through the return?

A Right.

MR. SHAW: Objection, that's not what he said.

THE COURT: The objection is sustained. As to what his testimony was, the jury has heard his testimony.

BY MR. JOHNSTON:

Q To what extent did you discuss with Judge Claiborne on that occasion the specific items that appeared on the various pages of the tax return?

A Minimally. I checked through the return with Judge Claiborne and you might say more or less to determine that all the pages were there. We looked through the tax return, we had some brief small talk. As I recall he wrote the check and I left.

Q Did he ask you any questions at all about the return?

A No, sir.

MR. JOHNSTON: No further questions.

THE COURT: Recross-examination.

MR. SHAW: Thank you, your Honor.

RECROSS-EXAMINATION

BY MR. SHAW:

Q Mr. Watson, you recall testifying before the Federal Grand jury in this building on June 8th 1983, do you not?

A Yes, I recall that.

Q On page 163 for purposes of the record at the bottom of page 162 were these questions and these answers, were these questions asked of you and these answers given by you,

"Q. How much time did you spend in his chambers discussing the tax return with him?

A. Well, we probably discussed the tax return about ten, 15 minutes and we were visiting. However it came about, I called him to tell him the tax return was finished because I normally don't deliver and he asked me if I had ever been in the Judge's chambers and I said no. And he said, 'Why don't you come on down and I'll give you a tour'. Court was not in session so I delivered the tax return, and I think I was there probably an hour.

Q. What portion of that hour was spent discussing the tax return?

A. I can cover one of those tax returns with you in ten, 15 minutes.

Q. Did he leaf through it and glance through it?

A. We went over each page. 'That's what we did here and this is what happened here and this is what your refund is going to be', and a general summary.

Q. Did he sign it in front of you?

A. I can't recall."

Q Do you recall giving those answers to those questions?

A Yes, I do.

MR. GOODMAN: Thank you.

FURTHER REDIRECT EXAMINATION

BY MR. JOHNSTON:

Q Mr. Watson, is your present recollection different from what it was when you were questioned before the grand jury in Reno?

A Yes, it is.

Q Is your present testimony your best present recollection?

A That's my best present recollection. I guess the significant thing was that we reviewed the tax return for about ten or 15 minutes.

MR. JOHNSTON: Thank you, sir. No further questions.

MR. SHAW: Nothing further.

THE COURT: Thank you Mr. Watson, you may stand down and be excused.

MR. JOHNSTON: Defense will call Judge Claiborne at this time, your Honor.

HARRY E. CLAIBORNE, DEFENDANT, SWORN

DIRECT EXAMINATION

BY MR. JOHNSTON:

Q Where do you live, Judge Claiborne?

A Las Vegas, Nevada.

THE COURT: I excuse. Maybe we should get his full name. This is Harry Eugene Claiborne.

BY MR. JOHNSTON:

Q Would you please state your full name and spell your last name?

A Harry Eugene Claiborne, C-l-a-i-b-o-r-n-e.

Q What is your residence address?

A 1908 Plaza de la Cruz, Las Vegas, Nevada.

Q What is your occupation?

A I'm a Judge.

Q You're a Judge of the United States District Court for the District of Nevada?

A That is correct.

Q How old are you?

A 67.

Q Will you tell us what your formal education is, Judge Claiborne?

A I attended college in Arkansas at Ouachita --

Q What was that?

A Babtist University in 1936.

Q Did you graduate from that college?

A No, I did not. I accumulated sufficient semister hours and I went to law school.

Q Where did you go to law school?

A Cumberland University in Lebanon, Tennessee.

Q Did you graduate from the law school?

A I did.

Q When?

A June 6th, 1941.

Q What did you do upon graduation?

A I went into the army.

Q Where were you inducted?

A I was inducted at Camp Robinson, Arkansas in Little Rock.

Q How long were you in the service?

A Until mid year of 1945.

Q What's the beginning of that period again?

A It would have been, I believe I was enlisted on August the 3rd, 1941.

Q Would you tell us briefly what your duties were while you were in the army? Where were you first assigned?

A Well, I was first assigned in the infantry and then transfered to what was called then the Air Corps which is now the Air Force and I stayed in the Air Force the greater part of my tenure in the military service except a short time that I was assigned to what then was a new unit called the Military Governor's Unit.

Q I'm not sure what the word is in the Army. What was your rank or rate when you were first inducted?

A Private.

Q What was your situation when you were discharged?

A Chief warrant officer.

Q All right, sir. Would you tell us, sir, what kind of duty you had when you served with the Air Force; what were you doing?

A All types of duties. Mainly I was, mostly I was the Group

Sergeant Major at the Santa Ana Army Air Base and I was a Base Sergeant Major at the same installation. I was transferred to Las Vegas Army Air Base. I was a Group Sergeant Major there.

Then I was appointed a Warrant Officer Junior Grade and I went into the Provals Marshall Division and became a military policeman. Then I was transferred into the legal section and transferred back from the legal section to the Military Police unit and I ended my career in the Army in the Military Governor's Attachment in Lowry Field or Buckley Field, Colorado.

Q Did you meet Jay Wright in the military?

A I met him what is now Nellis Air Base in, I believe in 1943 or '44, I'm not sure.

Q What did you do immediately after you were discharged from the army?

A I decided to make Las Vegas, Nevada my home. My home had previously been Arkansas and I had to have a year's residence before I could take the bar examination. So I went to work as a policeman on the Las Vegas Police Department.

Q Had you previously taken the bar examination in other states?

A Yes, I'd taken the Arkansas bar and passed.

Q So you went to work as a policeman?

A Yes, I did.

Q In the Las Vegas City Police Department?

A That is correct.

Q What kind of assignments did you have there?

A I was a patrolman for a period of time. Then I was promoted to the Detective Bureau and at the time that I passed the bar examination and became sworn in as a lawyer I was a Sergeant of the Detective Bureau.

Q When were you sworn in as a lawyer?

A In 1946 and I believe in January.

Q All right, sir. What did you do upon being sworn in as a lawyer?

A I went to work as a Deputy District Attorney in the District Attorney's Office of Clark County, Nevada.

Q How long did you work in that office?

A Approximately two years.

Q Would you tell the jury just briefly what kind of matters you handled while you were employed in that office?

A Well, like every lawyer that goes into the District Attorney's Office you first handle matters in Justice of the Peace Court, rather unimportant matters, miscellaneous cases. I did that for awhile. Then I went in, I was promoted to the felony section and eventually became the chief Deputy District Attorney of the County and I was charged only with trying the more important felony cases.

Q In that position were you second only to the District Attorney himself?

A That is correct.

Q Is he an elected official?

A He is.

Q How long did you work in the District Attorney's Office?

A Two years until I decided that I wanted to run for the Assembly so I resigned to make the race for Clark County Assemblyman and I won and eventually served one term.

Q How long is the term?

A Two years.

Q Did you run again?

A I ran again, I ran for the Senate but it was the judgment of the voters that I be retired. In other words, I lost.

Q What did you do after you left the District Attorney's Office?

A I went into private practice.

Q Where?

A In Las Vegas, Nevada.

Q Were you a sole practitioner at that point?

A I was.

Q You simply opened up an office?

A I sure did.

Q Did you have any other lawyers associated with you?

A No.

Q Did you have employees in the office?

A Yes, I had one and I was lucky to pay her.

Q What kind of practice did you have during those early years in private practice? What were you doing?

A Well, I handled everything. I could safely say the world wasn't exactly beating a path to my door, so I handled everything that came in, general office practice, trials of misdemeanor cases, felony cases, civil cases of all kinds.

Q Did you handle estate matters?

A Yes, I did.

Q Did you handle civil litigation?

A Yes, I did.

Q Personal injury cases?

A Yes, I did and also criminal cases.

Q Now did there come a time when you began to specialize in your practice?

A Approximately five or six years after I'd opened my office I started in trial specialty only and I did, myself individually, I did virtually nothing else for the rest of my career as a lawyer but tried lawsuits.

Q Was this the result of some deliberate decision you made or was it the result of the kind of clients that were coming to your door?

A Well, it was a decision that I made. I wanted to be a trial lawyer and I thought the time was right to do it.

Q Did you try cases in other places than in Las Vegas?

A I've tried cases all over the country in my career.

Q In other states as well as Nevada?

A Yes, many other states.

Q Were some of those cases highly publicized?

A In the last ten years that I practiced law nearly all of them were highly publicized.

Q Were your clients always able to pay for your services?

A No.

Q Did you defend people who were unable to pay?

A I think I can safely say that I handle more indigent cases in the State of Nevada than any other living lawyer.

Q Were you ever appointed by courts to represents defendants in criminal cases?

A Countless times.

Q When that happened were you compensated at all for your work?

A I was only partially compensated for most of my career. There were no indigent funds, not even in the federal system for payment of a lawyer for an indigent. I mean we did it because it was part of our oath and because the Court would assign you and you did not expect any remuneration and didn't get any but there was provisions in the state system that you could get some expenses.

I recall a murder trial I had in Reno that my attorney, Mr. Raggio, was prosecuting and it lasted many weeks, I think I was allowed $600 and probably spent some $2,000 in the course of the trial and that's the way it generally went.

Q You say Mr. Raggio was prosecuting. Was he the District Attorney up here?

A He was.

MR. HENDRICKS: Excuse me, your Honor. I hate to interrupt Judge Claiborne, but I don't see the relevance of this if we're going to go through each and every case that Judge Claiborne tried as an attorney.

MR. JOHNSTON: I don't intend to do that.

THE COURT: You can't do that. You may go into his experience, of course, adequately in the civil field, in the criminal field, in the trial field or research field which I take it was the last comment that he did not specialize in most of the research work but someone in his office did, but you may go into it reasonably. But let's not get into each individual case. We can't do it.

MR. JOHNSTON: I don't propose do that at all, your Honor.

THE COURT: Well, I'm talking about Mr. Raggio's case.

MR. JOHNSTON: I just wanted to identify what Mr. Raggio's role was in that case, your Honor.

BY MR. JOHNSTON:

Q Judge Claiborne, as you practiced as a private attorney and as you became known and you made court appearances and conducted trials, would you say that you were an outspoken person or a restrained person?

A I have trouble keeping my mouth shut. I generally say what I think and that sometimes does not sit well with people.

Q Has this in the past tended to generate criticism with you?

A Yes, it does.

Q Has there be criticism in the media and newspapers?

MR. HENDRICKS: I'm going to object. This is irrelevant.

THE COURT: We don't try this case in the newspaper. I would assume every lawyer and every Judge has been criticized from time to time.

MR. JOHNSTON: If the Court is prepared to take judicial notice of this I won't pursue it further.

THE COURT: Well, I can say some young lawyer first starting out in his first case he may avoid it but after you practice law for any period of time you're bound to be hit by the media.

BY MR. JOHNSTON:

Q Did you make enemies in the course of your practice?

MR. HENDRICKS: Objection, irrelevant.

THE COURT: He has said that he represented people and from time to time and was criticized. What is the necessity of going into enemies during the course of his practice?

MR. JOHNSTON: I'll withdraw the question.

THE COURT: All right.

BY MR. JOHNSTON:

Q Did you renew your acquaintance with Mr. Wright after you began to work in Las Vegas?

A Yes, I did.

Q Can you recall about when that was? Was that immediately after you got out of the Air Force?

A I think about six months after I was out my recollection is that I met Jay and he had married a young lady in Las Vegas who lived, who is a native of Las Vegas and her brothers ran a restaurant right across the street from my office and I went in one day and he was there and I then learned that he was going to the University of Utah and he was studying accounting. Eventually he graduated and opened his office in Las Vegas and I became a client.

Q When did you become a client of his, if you can tell us?

A I would say 1949.

Q What kind of work did he do for you at the beginning?

A In the very beginning he did just monthly statements and monthly balances for me and, of course, prepared my individual income tax return.

Q Did that work continue on then for some period?

A On yeah.

Q How long did he continue to do your office accounting work and your income tax returns?

A He continued to do my office work until I took the bench in September 1978. Then I guess he -- I guess a good phrase would be he mopped up then the practice the end of '78 and that was the end of his employment as my accountant, save and except he did prepare the 1979 tax return.

Q Did there later come a time when you had other lawyers associated with you in your practice?

A Yes, I did.

Q Who were they?

A Well, I had several lawyers through the course of the years --

THE COURT: Later from what, since 1979?

MR. JOHNSTON: Later from the time he first began his practice.

BY MR. JOHNSTON:

Q After you began practicing as a sole practitioner did you later have other lawyers with whom you associated?

A Oh, yes, I had other lawyers who were employed by me.

Q And was James Brown one of those lawyers?

A Yes. By the time that I had quit he had been with me ten years. Well, I think he'd been with me maybe 12, 14 years and Miss Annette Quintana had been with me 11 years.

Q Would you describe for us, Judge, the kind of records that were maintained in your office specifically with respect to recording income, fees that were received, what kind of records were they?

A Well, we had a system of course nearly all the time that Miss McElwain was there, she and Miss Quintant, she set up a system in the office with Mr. Wright's guidance and it proved to be a very effective and good system for the office.

Simply it was this. That if a client came in who wanted one of the attorneys in the office and we were retained by them, that particular lawyer would take a file and write on a printed form that we had the client's name and the fee arrangement and take it out to Miss McElwain and she would enter it on a card in a card index file and she would get the address of the client, verify the fee arrangement with the client and file the card.

She would prepare a file of the case and take whatever documents or perhaps what the client had brought in and put them in the file and then return the file to the lawyer's desk.

Q Were the files numbered or were they set up alphabetically?

A Are you talking about the card index file?

Q No, sir, the file on the case.

A The file on the case was not numbered at all.

Q And the card index cards, were they filed alphabetically?

A They were filed alphabetically.

Q What kind of record was made if a client came in and paid a fee?

A Almost always the client paid the fee to Miss McElwain. I can't recall in the entire period that she was there receiving over maybe one dozen fees.

Q Personally, you mean?

A Personally outside of maybe the original retainer. Sometimes they would hand you a check and you would you just clip it to the file that you were going to take out to the secretary. Most times a client would pay Miss McElwain and she would record it in the receipt book, she would give the client the receipt, she would put one copy into the file and then monthly Mr. Wright would get the third remaining copy in the book.

Q Would you describe the receipt book for us, please? What was it like?

A It was a book I would say approximately eight inches wide and maybe 11 -- long, and may be 11 inches wide. It opened to the left. I believe it had three receipts to the page, all numbered in sequence and with three receipts, original and two copies to each receipt.

Q Is it my understanding that one copy of the receipt was sent to Mr. Wright?

A Yes.

Q Did he get a copy of each receipt?

A Yes. He got a copy of the receipt that remained in the book.

Q That receipt, was it perforated on the sides so it could be removed easily from the book; is that the way it was set up?

A Oh, yes, all of the receipts could be torn out, perforated.

Q And one copy was removed and sent to Mr. Wright, is that the case, one copy of each receipt?

A Yes.

Q Was that done systematically?

A It was not removed from the book.

Q Would you explain, please?

A The last copy, you give a copy, you put a copy in the client's file and one copy was left in the book. Monthly Miss McElwain would make a Xerox copy of each page in the book for that month and those would go to Mr. Wright in a large folder type container that we had, we kept exclusively for him that contained certain documents that he got every month so it included the check stubs at the end of the month, all of the monthly invoices that came into the office whether they were personal or whether they were office.

They all went in to this one folder and every month he would come in at sometime after the end of the month, he would come in and pick them up.

Q Was that done consistently over the period of years that he was keeping your books?

A Absolutely.

Q Were their times when he would call and say he couldn't find something and mislaid it in the material that you gave him?

A Many times.

Q What happened there?

A Well, we'd duplicate.

Q Make another copy?

A That's correct.

Q But the charges in the book themselves were not torn out; is that right?

A That's correct.

Q And the books were retained in the office?

A That's correct. He received a Xerox copy of them.

Q Then did Mr. Wright also receive other records that he used in the course of his bookkeeping and preparation of returns?

A Yes, he did.

Q What were those?

A The deposit book and I guess that would be it.

Q Well, what was the deposit book?

A And the monthly bank statements.

Q Where did he get the bank statements?

A Bank statements went direct from the bank to his office.

Q Did those include the canceled checks that were reflected in the statements?

A Yes.

Q What were the deposit books, Judge Claiborne?

A The deposit book was a book about ten inches long and about I would say six inches wide. It had two deposit slips on the page, they were long. They were printed by the bank, you secured them from the bank and they were imprinted with my name and office address.

Q Were there copies of those letters or just an original or were there carbon copies?

A One copy. Original and one copy.

Q When a deposit was being made in the bank what was done with the original?

A The original then would -- I'm not sure I know. I know that our system and I don't know whether this was a copy or the original.

Q Let's see --

A But on one or the other along side each deposit, list of deposits would be the name of the client.

Q Would one of these two copies of the deposit slip then go to the bank with the checks that were being deposited?

A I would think the original. That's just my recollection, I really don't know.

Q What happened to the other copy of that deposit slip?

A Mr. Wright received that.

Q Did that stay in the book or was it photocopied and photocopies sent to him?

A It stayed in the book and copies were sent him.

Q So what he got, if I understand correctly, from the office were not exactly papers that were removed from books but photocopies of those records; is that right?

A That is correct and at the end of the year he took the book. We started out every year with a new book.

Q Now, if you know, what documents did he use to determine the amount of income that had been received?

A See, he used most of the bank statements and the deposit slips.

Q Would there be deposits made in the bank at times that didn't represent income?

A Oh, yes.

Q What kinds of things come to mind?

A Well, you know, a lot of things, like refunds and things of that nature. Some private moneys of mine. I can remember several things that occurred like flood damage, the check from the insurance company was deposited and picked up as ordinary income. There were several instances of that kind.

Q Had you given him or did you give him some standing instructions about how he was to resolve any question as to whether or not it was income or not?

A He was to consider the item income unless someone from my office specifically called him and told him that the item was not income.

Q All right, Judge Claiborne. I want to direct your attention now to the year 1972. Were you acquainted with Sidney Wyman?

A Yes, I was.

Q Would you tell us who Mr. Wyman was?

A Sidney Wyman was at the time of his death my warmest and closest friend.

Q How long had you known him before he died?

A Since 1946 when he first came to Nevada.

Q Do you remember what year he died?

A He died in June of 1978.

Q What was the -- did you have a professional relationship in addition to your warm friendship?

A Yes, I did. My relationship with him started as purely professional and remained both a professional then and a personal friendship for 25 years or more.

Q Did you perform legal services for him?

A Yes, I did.

Q Was there a case in 1972, a case you recall in which he was involved and you were also involved?

A Yes.

Q What case was that?

A The case where the Dunes Hotel was indicted here in Reno by the Reno Grand jury and all of the principal officers were individually indicted at the same time and Mr. Wyman as the chief operating officer of the hotel was indicted.

Q Did you represent him in that case?

A No, I didn't. Technically I did not. There were several defendants and, of course, several lawyers and it was decided that -- I was retained to assist Mr. Morris Shanker who is now the owner of the Dunes Hotel as trial counsel. Then among the lawyers available, a lawyer was assigned to each of the defendants and on the record I was not Mr. Wyman's attorney in the case but I tried the case along with Mr. Shanker.

Q Did you in effect render services to him as well as the client that you were nominally representing?

A I was trying the case for all of the defendants.

Q Were you the lead counsel?

A No, I was not. Mr. Shanker was the led counsel.

Q Was than an extended trial?

A Yes, it was.

Q Do you remember how long it lasted?

A No, I don't. I'm not sure how long it lasted. I know -- I believe, I just know the date that the jury came in and that was October 30.

Q Of what year?

A Of 1972.

Q That was a criminal prosecution?

A That is correct.

Q Were there felony offenses charged against the defendants?

A Oh, yes.

Q What was the outcome of the trial?

A All defendants were acquitted.

Q I want to direct your attention now particularly, Judge Claiborne, to the period around Christmas of 1972. Do you recall an occasion when you went to Mr. Wyman's suite at the Dunes?

A Yes, I do.

Q Why did you go there?

A He called me at my home and I mistakenly thought I detected some anxiety in his voice and he said, "Could you come by my suite? I want to see you".

Now I was having dinner with my family at the time and I said, told them, "I'll be right out as soon as I can". So I left hurriedly and I went out to the hotel to see him and as was always customary I called him from the bellman's desk when I would arrive there and I said, "I'm downstairs". And he said, "Come on up", and I went up.

Q Did you go by yourself?

A Yes, I did.

Q Where was his room in the hotel?

A His room was on the 5th floor and I believe it was 565. I'm not sure.

Q Did he have more than one room?

A No, he had a suite.

Q What did that consist of?

A Well, two bedrooms, a living room, a small study and that was about it.

Q What was his position with the Dunes Hotel at that time?

A He was the chief operating officer.

Q When you arrived at his suite were there others present?

A Yes, Mr. Selman and Mr. Duckworth.

Q Are those two gentlemen that have testified at this trial?

A Yes, they were employees of the Dunes Hotel at that time.

Q Will you tell the ladies and gentlemen of the jury, Judge Claiborne, what took place after you arrived in Mr. Wyman's suite?

A When I arrived, Mr. Wyman -- I immediately saw Mr. Duckworth and Mr. Selman. The first thing I thought was there was some problem because I had mistaken the anxiety in his voice and I said to him, I said, "What's wrong?" And he said "Oh, nothing. Nothing is wrong. How are you?" And I said hello to Mr. Selman and Mr. Duckworth and he was in his pajamas and robe.

Q What time of day was this?

A This was in the evening, I'm just guessing somewhere around say 9:00 o'clock.

Q What happened next?

A He went over to a small round table and picked up a package that was wrapped and he handed it to me and he said, "This is a Christmas present for you".

Q Would you describe the package, please?

A I know the package was wider than it was tall and I would just guess maybe five and a half to six inches high and maybe six inches wide.

Q And how long?

A How long?

Q How long?

A I would say about ten inches.

Q How was it wrapped?

A It was wrapped with some form of Christmas paper.

Q You say he handed the package to you?

A Yes, he did.

Q Did he say anything when he did that?

A He said, "This is a Christmas present for you". And I said, "Thank you very much". I started towards the divan to sit down and on my way there I said, "I'll put it under the Christmas tree". And he begin to laugh. And he said, "Don't do that. There is $100,000 in that box".

Q Were you surprised at that?

A No.

Q Why not?

A I wasn't at all surprised by it. I knew that -- I knew his deep feeling for me, I knew that during the trial that he was not feeling well. He developed cancer then and did not know it and he had, during the latter stages of the trial, begun to stay near me.

It's hard to describe. I think he was leaning on me, that the trial was taking more than he possibly could really stand. And then he thought that I had won the case.

Q Did he express that to you?

A Yes, he did and he said to me, "You saved my life many times". So I knew how generous he was and I knew that he had lots of money and it just did not surprise me it was so typically him.

Q Was there any further conversation about the gift while you were at his suite?

A He said to me something to this effect and I believe substantially this as I will state it, that, "You have -- you work too hard", is what he said. "You spent all of your life working for people who the large majority of them don't deserve it". Then he said, "And the terrible thing about it is most of them don't appreciate it". He said, "I want you to take that money and spend it for yourself. I want you to go places that you have not gone and do things that you want to do". And he said, "Enjoy life for a change". And then he said, "And for

God sake don't invest it. You make the worst investments of anybody I've every known", and he was so right.

Q Did Mr. Duckworth or Mr. Selman have any part in this conversation?

A They didn't say a word. I don't think they said a word. I think Mr. Selman started to get up and leave at one point. Mr. Wyman said, "Sit down, I want to talk to you later".

Q Was Mr. Wyman a wealthy man, Judge?

A Yes, he was. Mr. Wyman would get into -- he was known as a gambler. I'm sure he gambled on anything but principally he was a private poker player.

Q Had you seen him as he was gambling?

A I've never gone with him when he was gambling in my life. I don't gamble and I've just never had the time or inclination to gamble, so I've never gone with him. I have been in his suite in his hotel on numerous occasions when a poker game was going on. He played with, the country is full of -- I don't say full, but many, many, many poker players from all over the country and these people meet and they play poker for astounding sums of money.

Q Were you in his suite when some of these games were in progress?

A Oh, yes.

Q Were you able to observe the amount of money that was being gambled?

A That I know he --

MR. HENDRICKS: Excuse me. I'm going to object to these various poker games. I think they are irrelevant, your Honor.

THE COURT: Well, let's take the mid-afternoon break at this time, members of the jury, if you will step out.

(The proceedings continued in the
absence of the jury.)

THE COURT: Now, once again, gentlemen, we cannot go into every one of Mr. Wyman's poker games. Can't you cover this with the Judge?

MR. JOHNSTON: In fact, I'm substantially through with this part, your Honor.

THE COURT: I beg your pardon?

MR. JOHNSTON: I'm substantially through with this portion of the testimony, Judge. We will go into another subject. I wanted to pursue the $100,000 but I'm through with the characterization.

THE COURT: I understand, but let's get away from this. Like with other witnesses, Judge Claiborne can testify what sums of moneys if any he's seen Mr. Wyman and give an estimate of it at least. I don't suppose he ever counted it but I have no objection to that. It was asked of other witnesses but let's not go through every one of Mr. Wyman's poker games. We will take about a ten minute recess at this time.

(A short recess was taken.)

THE COURT: Tell the Marshall to let the jury come in. Judge Claiborne may resume the stand.

THE COURT: All the jurors are present. All right, Mr. Johnson, you may resume.

BY MR. JOHNSTON:

Q Judge Claiborne, what did you do with the box with $100,000 in it when you left Mr. Wyman's suite?

A I drove to the Horseshoe and delivered it to Mr. Ted Binion.

Q Who is Mr. Ted Binion?

A Ted Binion is one of the operators of the Horseshoe Casino and Hotel in Las Vegas.

Q Incidentally, were you paid for your services in the Dunes trial?

A Yes, I was.

Q Was the $100,000 in any sense in lieu of a fee for that work?

A Oh, no.

Q All right, sir. What did you do when you got with Ted Binion, what happened then?

A I first looked for his father and I could not find him and then I looked for his older brother and could not find him and then I asked if Ted was there and they said yes and I had them page him and he was on the floor.

Q Is Ted Binion's father a friend of yours?

A Yes.

Q Of long standing?

A Since 1947.

Q What happened when you got together with Ted Binion?

A I told him what I had in the box.

Q Had you opened it at that point?

A No, I had not. I still had the Christmas wrapping paper on it.

Q What happened after you told him what you had?

A I said, "Could I leave it in your safety deposit box?" And he said certainly.

Q Were you referring to a particular safe deposit box or is this something different from taking it on the cage and giving it to the cashier and getting a receipt?

A I know from long friendship with the family that they all had safety deposit boxes.

Q Where were they located?

A They are located, facing the cage on the extreme right-hand side there's an alcove and a wall that you can't see from inside the cashier's cage and the safe is there and underneath the safe is a number of different sized safety deposit boxes.

Q Was the money removed from the box in which you'd received

it?

A Yes, right there.

Q In his presence?

A Yes. I unwrapped it, took the money out and he went to get some envelopes and he came back with some. He put one package in one envelope and another package in the other envelope and I wrote my name on it, "This is the property of Harry Claiborne", is what I put and handed it to him and he put it in his, one of the safety deposit boxes.

Q Did you write that on each envelope?

A Yes, I did.

Q Did you count the money?

A No, I did not.

Q Did you have any way of knowing how much was there except what he'd told you?

A No, it was two packages and they both looked equal in size. They had $5,000 straps on them and then the bundles had rubber bands around each end.

Q Did you put the money in the envelopes or did he?

A I think I put one bundle in one envelope and he put a bundle in the other envelope.

Q What happened then to the envelopes?

A He took the two envelopes.

Q Did you ask for a receipt?

A Of course not.

Q Did he give you a receipt?

A Why of course not.

Q All right, sir. Did there come a time when you removed some of the money from one of the envelopes?

A Yes. The last day I was in practice which would have been August 31, 1978.

Q Had you removed any of the money before that?

A Yes.

Q Will you tell us how many times you had made withdrawals from the envelopes before the last day you were in practice?

A My recollection is two.

Q How much was removed on the first occasion?

A My recollection is that I only removed money twice and I took 10,000 each time.

Q Are you able to recall when these withdrawals were made?

A The first one was in 1975 and the second one I believe was in 1976 or '77.

Q Was there some particular reason on the first occasion for withdrawing money? Did you need it for something special?

A I'm not sure.

Q Do you recall as to either withdrawal whether there was a particular reason for taking the money out of the vault?

A On the second occasion to say exactly what I took it out for I'm not sure but I think that it was because I was engaged in extensive remodeling of my house, a complete remodeling of my home.

Q All right, Judge. Now I want to direct your attention to August 31st, 1978. You have a reason, do you, to remember that day?

A Yes, I do.

Q Why?

A The last day I was in practice.

Q Were you to be sworn in the following day?

A Yes.

Q I'd like if we can to take chronologically in sequence the events of that day as they relate to you and Mr. Wright. Did you have a conversation with Mr. Wright early on that day?

A Prior to 10:00 a.m. that morning I called Mr. Wright and I said, "This is my last day in the office, we're closing it down. Are there any specific instructions?"

Q What did he say?

A He said, "None that I can think of". Then he said, "Have Jenny get the check stubs and deposit slips together for me if she can. If she doesn't have time, just tell her to get the books and I will come down and get them".

Q Was there some conversation about a tax liability at that time?

A He said, "Have you taken care of your tax liability?" And I said, "No, I haven't".

Q What tax liability did you have in mind when you had this conversation?

A I owed the Government $76,000.

Q For what?

A Income tax from the year 1978 -- '77.

Q '77. All right, sir. Was there some further conversation about this tax liability, what ought to be done about it?

A Yes. He said, "Have you taken care of the tax liability?" And I said, "No, I haven't". and I said, "Do you know what it is?" And he said, "I have the statement".

Q You were asking him for the amount; is that what you meant?

A Yes. And he said, "Just a minute", and he came back on the phone and he said, he gave me the amount. And then I asked him what my balance was because he had, always had my bank statements.

Q Did you not know what your bank balance was, Judge?

A No, I didn't.

Q So you asked him?

A I asked him.

Q Did he give you a bank balance?

A Yes, he did.

Q Was that the balance then that was actually in the account on that date?

A I don't think so. I think it was -- my recollection was it was short and that's in all probability why I went down and took the money.

Q Was there some discussion about how you could calculate a more up-to-date balance?

A Yes. I asked him what my balance was and he told me and then he said to me, "But that won't be accurate because," he said, "You've written checks and made deposits," and he said, "Take your deposit book, add up your deposits, add it to the amount of your balance, add up from your checks stubs the checks you've written and it will give you a near accurate balance", he said, and that's what I did.

Q Did you have the statement from the IRS at that point in time?

A No, I did not.

Q Who had it?

A He did.

Q Did you need a copy of that statement if you were going to send in a payment to the Internal Revenue Service?

A That's what he told me later. He called me on the phone and he said, "You'll need one copy of this statement to mail with your payment", and he said, "I'll bring it down and leave it with Jenny". That's what he said.

Q Is this later on the same morning?

A It was almost immediately after.

Q Did you bring a statement down?

A Yes, sometime in the afternoon.

Q Did you have any conversation with him when he brought the statement down?

A Yes, I did.

Q What was said at that time?

A There wasn't much said. He came in with a statement, he handed it to me, he had it in an unsealed envelope. I took it out of the envelope and I said, "Which copy goes?" He told me and I wrote the check.

Q Was your bank balance sufficient to cover that large a check at that time?

A No. At that time?

Q Yes?

A Yes.

Q What was the size of your bank balance?

A Well, I had just deposited the money that I got, went down to the Horseshoe and got it so I knew I had enough money to cover the check.

Q When did that occur, when did you go to the Horseshoe?

A I went to the Horseshoe and got my money from Mr. Binion during the lunch hour.

Q Did you have any conversation with Mr. Wright about going to the Horseshoe or getting the money?

A Not before I went to get it. When he came in with the tax bill from the IRS it was then I wrote the check. Then while he was there I said something to the effect that I had to go get it at the Horseshoe.

Q Now I want to be clear, Judge. Had you already been to the Horseshoe when you wrote the check?

A I had already been to the Horseshoe, yes. I got my money during the lunch hour at the Horseshoe, somewhere between 12:00 and 1:00 o'clock that day.

Q Did you have any further conversation with him after you wrote the check?

A Yes.

Q This is in your office now?

A In my office.

Q Do you remember any additional conversation when he was there and you wrote the check?

A Other than what I've told you?

Q Yes. Was there anything said about the --

A Just to the effect that he was sorry to see me go on the bench and he thought I was making a big mistake.

Q Was there any conversation about him getting records from the office?

A Yes.

Q What was that?

A He said, "I was going to take the records with me but you may need them between now and 5:00 o'clock". And then he said, "Or whatever time you close down today. So would you mind dropping them by my office tomorrow?"

Q What was your response?

A Well, he said, "Drop them by to me", he didn't say what day and I said, "I'm going to be here tomorrow until, tomorrow morning," I said, "until noon, if you want to drop them off or if you wanted to drop by and get them I'll be happy to have them ready for you.

Q Did he come by and get them?

A Yes, he did, early.

Q When you had gone to the Horseshoe did you withdraw all the money that was left in Ted Binion's vault?

A Yes.

Q How much was that?

A 80,000.

Q What did you do with the $80,000?

A I went and deposited $75,000 of it in the bank and I stuck the other $5,000 in my pocket.

Q Was that deposit made on the same day?

A Yes, it was.

Q What did you do with the 5,000 that you stuck in your pocket?

A I spent it.

Q Do you recall any further conversation at any point with Jay Wright about the $75,000 deposit?

A Ever? Are you talking about in that period of time or are you talking about in the future?

Q No, sir, in that period of time, let's say in the spring of 1978.

A The only other conversation that I have had with him about the $75,000 --

Q I'm sorry, it should be the spring of '79, Judge, I misspoke myself.

A -- was that he either call me or I call him. My recollection is, he said that he called me, my recollection is that I called him but either way I did have a conversation with him sometime in early, early 1979.

Q What was the conversation?

A I simply said to him, I said, "Remember that there is $75,000 deposit on the last day I was practicing?" I said, "It's not income". And he said okay.

Q Did you ever tell him that that $75,000 was a loan?

A No, sir.

Q Was it a loan?

A No, sir.

Q You didn't earn any interest on the $75,000 while it was at the Horseshoe, did you?

A No, sir.

Q Did that disturb you? Were you worried about the loss of interest?

A No, sir.

Q Had there be any other occasions when you had held a large amount of money in a form that drew no interest or wasn't in an account?

A Yes.

Q When was that?

A I think 1975 I withdrew $50,000 from my account, I bought a cashier's check made payable to myself and I put it in my desk drawer.

Q How long did it stay there?

A I left it there a year and a half.

Q How far does that take it, what year?

A Well, '75, '76, somewhere in the early part of '77, I would say.

Q Did you later remove it from the desk drawer?

A Oh, yeah. And I went over across the bank and bought a TCD.

Q What is that?

A Time certificate of deposit.

Q Do you remember when that matured?

A Do I remember what?

Q When the certificate of deposit matured?

A No, I do not. I think it was a year certificate. I'm not sure.

Q Judge, when you took the money out of the vault, when you removed it from Ted Binion's vault and you deposited $75,000, was there a deposit slip prepared?

A Yes. Miss McElwain prepared it at my request.

Q Who actually went to the bank to get the money?

A I did.

Q Did you take the deposit slip with you?

A Yes, sir.

Q Now, Judge Claiborne, I want to show you Government exhibit 28 and 28-B. 28 being the copy that was originally received in evidence and 28-B being the original and I'll ask you what that is?

A That's a memorandum written by me to Jay Wright wherein I requested that he write a letter to Stanwell Mortgage Company verifying my earnings from private practice since I'd been on the bench.

Q And I've placed --

A For 1979.

Q I've placed the Government's blow-up of that letter on the easel here. There's no reference in the letter itself to Stanwell Mortgage Company, Judge. Do you know how he got the information that it was Stanwell that you wanted him to write to?

A You can see on the document, on the letter, where something has been stapled to it looks like several times. I had received a letter from Stanwell Mortgage Company or an application form of some kind. I remember that I attached a document pertaining to Stanwell Mortgage to this.

MR. JOHNSTON: May I just display this to the jury so that they can see this?

THE COURT: Yes.

BY MR. JOHNSTON:

Q All right, sir. Now directing your a attention to this exhibit again, 28-B, I'd like you to look at the original rather than the copy. There are some notations on the bottom part of that. Let me ask you first about over here where it says plane cost $11,000. Is that your handwriting?

A No, it is not.

Q These notations and numbers that are entered in the lower right-hand side, are those in your handwriting?

A No, they are not.

Q Are the list of deposits, the dates and the amounts, in your handwriting?

A Yes, they are.

Q What about the total, the $46,000 figure, is that your handwriting?

A Yes.

Q It appears from the document that it may have been written 45,000 first and then changed to 46. Did you change it?

A Yes, I changed it. You will I think notice when you see the item 4, I believe it's 4/18/79 of $1,000, I think that was added after the figures were added up.

Q Added by you?

A I think -- I'm sure of that.

Q Have you ever readded those figures, Judge?

A No, I haven't. I would sya they are in the ball park, though.

Q Now, Judge, did your system of recordkeeping change after you left the practice of law and became a Judge on September 1st, 1978?

A Yes.

Q Did you continue to work with receipts?

A No, no.

Q Or that sort of thing?

A No.

Q Why not?

A I had no reason to. I wasn't running a business. I was a private citizen like anybody else.

Q Did you have any staff people to handle this kind of thing for you after that?

A No. The Government takes a dim view of you're using employees for private business.

Q Now directing your attention again to this exhibit 28-A and B, what was the source of the dates and amounts that you wrote on that letter? What are those?

A Those are deposits lifted out of my bank statements that at the time appeared to me to be and I thought were income that I had taken in from my private practice.

Q Were you at that time keeping any kind of a personal record of fees that were received?

A Yes, I was.

Q Would you tell us what kind of a record that was, please?

A Well, when I would receive a payment, a fee owed me before I went on the bench from somebody and some of them were from Mr. Brown, Miss Quintana as you can readily see, I would write, I had and have on my desk a note container. I had blank pieces of paper in it to write notes on hundreds of them, it's a plastic device. I would take a note out of the container and I'd write down on the note the amount of the check, the date of the check, where it came from and most times what I did with it. If I cashed it somewhere I wrote on where I cashed it. If I deposited it in a bank I wrote where I deposited it. I would take this slip and I would put it in an envelope that I kept in my desk drawer of the desk of my chambers and then periodically I'd take that envelope home and I'd put it in a regular envelope that I had at home in my desk for that purpose. Periodically I'd take those slips out at home and I would record them in a book that I had where I kept just my own information for my own private knowledge and I used that book for a record of my collections showing '78, '79, '80, '81.

Q I'm going to show you a book that's been marked for identification as Defendant's exhibit 47 and ask you if that is the book that you're referring to?

A That's the book.

Q When did you begin to make notes in that book?

A 1976. The first entry I think is January 26, 1976.

Q Were you following that practice at the time you wrote this letter to Jay Wright?

A Yes, I was following that practice.

Q Incidentally, can you tell us when this letter was written? It's not dated.

A I would -- I'm pretty sure right around the first of March.

Q All right, sir. Now when you wrote the letter did you get this information from the book or from your slips of paper?

A No.

Q Why not?

A Because I had misplaced the envelope that contained the slips.

Q Did you look for it?

A Yes.

Q So what was the source of the information that you gave Mr. Wright?

A I took my bank statements and I went through my bank statements and I tried to pick out in my bank statements what I thought was fees that I had received.

Q Now with respect to the book, Judge Claiborne, are entries in that book all in your handwriting?

A Yes, sir.

Q Are they an accurate record of fees that you received?

A Absolutely.

MR. JOHNSTON: I'll offer the book in evidence.

MR. HENDRICKS: No objection.

THE COURT: Let it be admitted.

(Defendant's Exhibit 47 was admitted into evidence.)

BY MR. JOHNSTON:

Q Did Mr. Wright then write the letter to Stanwell Mortgage that you asked him to write?

A Yes, he did.

Q I'll show you exhibit 29 which consists of three letters and ask you if one of those letters is to Stanwell Mortgage Company?

A Yes.

Q What's the date of that letter?

A March 7, 1980.

Q Would you read the letter, please?

A "I have been Harry Claiborne's accountant for over 30 years and he has asked me to furnish you the following information concerning his earnings from the practice of law. The year 1978, the year he went to the federal bench his earnings from the private practice from law was $78,723.46. His earnings from the private practice of law for the year 1979 was $45,371.93. His earnings from the private practice of law so far in 1978 is $41,000. Yours very truly".

Q Do you know why the earnings for 1979 are stated in the letter as 45,000 whereas your total shows 46,000?

A Well, when he added them up I guess he saw I was wrong or he just adopted my figure. I don't know which one is right. He had 45,371.93 and that was my original amount that I corrected to 46,000.

Q Now, Judge Claiborne, I want to direct your attention to the date of April 11, 1980. Do you remember that day?

A April 11th, 1980?

Q April 11, 1980.

A Yes, I do.

Q I want to show you a document that's been marked for identification as Defendant's exhibit 1 which is a letter dated April 11, 1980 and ask you what that is?

A It's a letter from me to Jay Wright on the stationery of my former law practice.

Q Do you recognize that as a true copy of the original letter?

A It is.

MR. JOHNSTON: I'll offer it in evidence.

MR. HENDRICKS: I think I will object to that, your Honor, unless a proper foundation is established for this as a true and correct original copy of the original letter.

MR. JOHNSTON: The witness has just testified --

THE COURT: He's just testified that it was a copy of the original letter, I thought. Am I incorrect in that?

MR. JOHNSTON: I think you're correct, your Honor.

THE COURT: I may be wrong.

MR. JOHNSTON: That was my question and his answer.

THE COURT: If he testified to that effect it will be admitted as Defendant's exhibit number 1.

(Defendant's Exhibit 1 was marked
for identification.)

BY MR. JOHNSTON:

Q Would you read that letter to the jury, please, and hold up just a moment, Judge, because I think we have blow-up of that. I'll ask you, Judge Claiborne, if this is an accurate photographic reproduction of the document you have at the witness stand?

A Yes.

MR. JOHNSTON: May we have this marked and I'll offer it into evidence.

THE COURT: Defendant's exhibit 1-A.

MR. JOHNSTON: May the record show I'm placing this on the easel here so that the jury might view it?

(Defendant's Exhibit 1-A was marked for
identification and admitted into evidence.)

BY MR. JOHNSTON:

Q Would you read the letter please?

A It says, "Jay, enclosed check in the amount of $8,000 and W-2 form from the United States Courts as requested. Fees received during 1979 for practice before I became a judge are $41,073.93. I also sold my airplane in April, received $11,000, I paid 11,000 for it, so there is no profit or loss. I don't have Nevada Savings interest statement, thought I had sent it to you you. If not, I will get it".

Q All right, sir. Will you tell us again what the cost of the airplant was as stated in that letter?

A 11,000.

Q And if you will refer please to exhibit 28, what is the cost of the airplane noted on the left side of exhibit 28?

A Cost 11,000.

Q Thank you. Now, Judge Claiborne, how did you arrive at the $41,000 figure that you gave Mr. Wright in this letter?

A Could I explain something, please?

Q Well, can you explain how you arrived at the $41,000 figure? The Judge is going to stop us otherwise.

A All right. What was your question?

Q Do you recall how you arrived at the $41,000 total that your put in the letter for your 1979 fees?

A Yes. I took the slips from 1979 which at that time I had not recorded in my book out of an envelope. I put them in, I went through them and I recall putting them in chronological order as to date and listed them, added the amount up and that was the amount that I added.

Q I want to direct your attention, Judge, to Government exhibit -- it has no number on it. Okay, here it is, 42. I assume this is 42. I guess this is not an A, your Honor, I think this is the original exhibit 42 and ask you what is the amount that's shown as your total fees for 1979 as your --

A $22,072.93.

Q How does that compare to the figure set forth in your letter of 41-A?

A One dollar less.

Q Now, Judge Claiborne, would you take the diary that you have there where you recorded your fees, please, and can you locate in the diary and read to us the items that you had reference to when you wrote the 4/11/80 letter and came up with a total of $41,073.91? Are you able to do that?

A Yes.

Q Would you read off those items, please?

A January 5, 1979 $3,381.10. You want me to read everything that's on the entry?

Q All the entries for fees that came in in 1979, please.

A January 5, 1979, $3,381, Jim Brown, deposit Pioneer Hotel -- I mean Pioneer Bank. Janyar 16, 1979, $1,000, Annette, deposit Pioneer. January 19, 1979, $17,500, James M. Brown deposited Pioneer. January 26, 1979, $833.33, Jim

Brown below my entry just says Horseshow. It means cashed at the Horseshoe. January 26, 1979, $84.38, Jim Brown, deposit Pioneer Bank. February 12th, 1979, $1,000, Annette, deposit Pioneer. February 25, 1979, $1,106.66, Jim Brown, Horseshoe. March the 10th, 1979, $1,000, Annette, deposited Pioneer. April 12, 1979, $1,000, Annette deposit Pioneer.

May 15, 1979, $1,000 Annette, Horseshoe. July the 19th, 1979, $7,000, Jim Brown deposit Pioneer Bank. September the 20th, 1979, $2,905.90, Jim Brown, Horseshoe. November the 13th, 1979, $250, Jim Brown deposit Pioneer Bank. November 19th, 1979, $3,012.56, Jim Brown deposit -- cashed at the Horseshoe.

Q I note, Judge Claiborne, that the item that's recorded on the Government exhibit is 1,011.56, what's the amount of your entry?

A November 19, 1979, 3,012.56.

Q It would appear that accounts for the one dollar difference?

A Appears to.

Q Judge, when were these entries made in your financial diary there? When did you make those entries?

A The '79 entries?

Q Yes.

A The '79 entries would have been on several occasions. I don't recall making them all at once.

Q You didn't make an entry every time you got a check?

A No, I would not. I'd drop them in the envelope, transfer them to the envelope at home and they would accumulate.

Q Can you tell us when was the latest that any of those entries were made for 1979?

A The latest entry?

Q When were the entries actually made, the last one, for '79?

A November 19, 1979.

Q You didn't make entry on that date, did you?

A No, I did not.

Q Were entries made let's say sometime in 1980 or would they be made later?

A You mean the last entry?

Q For 1979, yes.

A Could have been.

Q Could they have been made later than that?

A Could have been.

Q Were they made after the investigation was begun in this case?

A Oh, of course not.

Q Now you still have the 4/11/80 letter there. Were there items enclosed with that letter?

A Yes, it was a W-2 form and an $8,000 check.

Q Why were those items enclosed with the letter?

A Mr. Wright had requested that I --

Q When did he make that request?

A On the telephone on April -- a telephone call April the 10th, 1980.

Q What was said in that conversation?

A Well, in that conversation, the first conversation I had with him on the 10th he called me up and he asked me if I would -- he said, "We've got to get an extension, you know that?" And I said, "I know that, it's April the 10th already". And he said, "Would you get your W-2 and read me off your wages," were his word, "wages and the amount of withholding?"

Q Did you do that?

A I did that. I went in and got them out of my financial file and then I read it to him, the figures, over the phone and I dropped the W-2 back into my financial file in the office.

Q Did you have another telephone conversation with him the same day?

A Yes, I did.

Q When was that, what part of the day?

A Later in the afternoon, sometime in the afternoon. My secretary left me a message to call him and I called him and he said, "I need a check for $8,000, can you bring it by?"

Q Did you agree to do so?

A I said, "Yes, I'll bring everything by tomorrow morning.

Q Did he ask for anything else at the same time?

A Yes, he told me to bring him the W-2 form and he said then the Nevada Savings interest statement and he said, "I'd like to have the amount of your other income".

Q Now when did you write the 4/11/80 letter?

A On the morning of April the 11th, 1980.

Q Did you also write a check for $8,000 that morning?

A I did.

Q I'm going to show you a document and ask you what it is, Judge Claiborne, without reading it?

A It's the $8,000 check that I delivered to Mr. Wright, had delivered to him to deliver to the Internal Revenue Service dated April the 11th.

MR. JOHNSTON: We'd offer this evidence.

MR. HENDRICKS: It's already in evidence, Government's exhibit 30.

MR. JOHNSTON: May I have that exhibit?

THE COURT: If it's already in evidence --

MR. JOHNSTON: If it's in I didn't want to put it in again. I couldn't find it if that's the case. I have exhibit 30. I don't find the checks in exhibit 30.

May the record show, your Honor, that the $8,000 check is not in exhibit 30 and we'll offer it into evidence at this time.

THE COURT: All right, let it be admitted as Defendant's next exhibit which I've forgotten the number on this one.

MR. JOHNSTON: I'm sure the check has a number, Judge.

THE CLERK: Exhibit 4.

THE COURT: Defendant's exhibit 4.

(Defendant's Exhibit 4 was marked for identification and admitted into evidence.)

BY MR. JOHNSTON:

Q Once again, what's the date on the check?

A April 11th, 1980.

Q Is this a copy of the check that was enclosed with the 4/11/80 letter?

A It is.

Q Now I want to show you Government exhibit 30 which contains several documents. May I stand by the witness while I direct his attention to these various documents, your Honor?

Judge Claiborne do you recognize this as a copy of the $2500 check?

A Yes, I do.

Q What's the date on that check?

A April 11th, 1980.

Q Is this a copy of your declaration of estimated tax for 1980?

A Yes, it is.

Q What's the amount that was estimated?

A $2500.

A   The payment of $2500 is estimated tax is 10,000.

Q   I see no date on that one. Another document enclosed in this file is an application for automatic extension of time to file U.S. individual income tax return for the year 1979. Is that your signature?

A   No, that's Mr. Wright's signature.

Q   Mr. Wright's signature, it certainly is. What's the date opposite his signature?

A   April 11th, 1980.

Q   Did you go to Mr. Wright's --

THE COURT: Is that in evidence already?

MR. JOHNSTON: It's in evidence, your Honor, Government's exhibit 30.

BY MR. JOHNSTON:

Q   Let's go back, Judge Claiborne. How did you transmit the 4/11/80 letter to Mr. Wright?

A   I gave it to Miss Ahlstrom.

Q   Is that Judy Ahlstom?

A   That's correct.

Q   Did you give her also the form W-2 and the $8,000 check?

A   I gave her the $8,000 check and told her to take it off of the income tax and enclose it with the letter.

Q   Did she then deliver the letter to Jay Wright?

A   Well, I presume she did, yes.

Q Then did you have some further conversation with Mr. Wright about a payment that was due with your declaration of estimated tax for the year 1980?

A Yes, he called later in the afternoon, the same day on the 11th. He called that afternoon and he said I have to have another check for $2500 and you have to come by and sign a 1040S I think he said.

Q And again is this check that's included in Government's exhibit 30 a check that you issued for that purpose?

A Yes.

Q Did you go by his office?

A Yes, I did.

Q Did you sign the declaration of estimated tax at his office?

A I did.

Q That's included in exhibit 30 also?

A That's correct.

Q Judge Claiborne, can you tell us where you obtained a copy, a copy that was in evidence of the 4/11/80 letter, where did you get the letter, a copy? The original went to Mr. Wright, did it not?

A Yes. Where did I get a copy?

Q Yes.

A From my files.

Q Do you know how it got in your files?

A Yes, I know how it got there. Mrs. Ahlstrom placed it there.

Q Did she make a copy?

A Well, I presume she made the copy. I had occasion to pull that file on six or eight different times and I saw that -- I saw this letter on at least four of those occasions in the file.

Q All right, sir. That's over some period of time?

A Yes.

Q When you went to Mr. Wright's office on the afternoon of April 11th, 1980, did you see anything on his desk?

A When I went there I saw -- when I walked in, I had to wait. There were a lot of people in there and I finally, when I got into his office I sat down at the side of his desk in a chair. He had a stack of files on the left-hand side of his desk. On the right-hand side he had a healthy pile of papers. In the center he had what looked like a stack of loose documents. On top of those documents he had the 1040S form.

Q That's the one you signed?

A That's the one -- the one I signed? I signed it and he turned it around to me to sign and I signed it and handed him the check.

Q Did you see the 4/11/80 letter on his desk?

A Yes, I did.

Q Where was that?

A On the right-hand side. Also I saw the $8,000 check attached on the application for extension that he signed.

Q All right, sir. Now that was on April 11. I direct your attention now to the first week in May 1980. Do you recall that period?

A Yes, I do.

Q In other words, that's about three weeks, three or four weeks after the April 11 episode?

A Yes, I remember.

Q Did anything -- did you receive some kind of message that was going to cause you to be out of town at that time?

A I received a call from Judge Browning, the Chief Judge of Ninth Circuit.

Q What did he tell you?

A He asked me if I would go to Los Angeles on the following Monday and it's a matter that would take a considerable period of time and asked me if I would please call Chief Judge Irving Hill as to staff requirements.

Q Did you agree to go up?

A Yes. Suggestions like being in the army are tantamount to being an order.

Q Now as a result of receiving that call did you have any conversation with Jay Wright?

A Yes, I did.

Q What was that, a telephone conversation or a conversation in person?

A I called him on the telephone and I told him that I was being assigned to Los Angeles and that I would be there for a considerable period of time it looked like. I didn't know when I was returning and should we make application for another extension.

Q What did he say?

A He said, well, he said, "I don't think so. Why don't we do it like we did it last time?" So I said fine.

Q What happened after that if anything?

A I began to get ready, to get everything ready so I could leave town. Then he called me back. And he said, "I need additional information", is what he said and I said, "What additional information do you need that you don't have?" And he gave me a list and the list, of course, he said, "Your wages". And I said, "For goodness sake, I delivered the W-2 to you the other day". And he said, "Just a minute". And he said "Yeah, you did". And he said, "That's five some odd thousand", and I wrote down the figure that he gave me.

Q Let me interrupt you at this point if I may, Judge, and show you Government's exhibit 31 and ask you what this is?

A That's a document that I prepared at his request on the night I am certain of May 1.

Q If you will hold on just a minute, Judge, I hope I can find a blow-up of that. Here we are. I'll put exhibit 31-A on the easel so that the ladies and gentlemen of the jury can see it also. May the record show that this is just the first page of that exhibit, your Honor.

Now the paper that you're looking at now, of course, this is a blown-up photograph, is this in your handwriting?

A Yes, it is.

Q Entirely in your handwriting?

A Yes, it is.

Q Will you tell us again what was the first piece of information he asked for?

A He said, "Your salary as a Federal Judge".

Q Did you give him that figure?

A I said, "No, you have my W-2".

Q What happened then?

A He said, "Just a minute", and he said, "Yes, it's $54,499.92".

Q Did you then write that on the paper?

A I wrote it on the note, I'm listing what he wants. I wrote it outside earnings as Federal Judge.

Q But you wrote the amount that he gave you over the phone; is that what you're a saying?

A That's right.

Q What was the next time?

A He said other earnings what he said.

Q What did you respond to that?

A I said, "Other earnings? Are you talking about interest earnings or not?" And he said no. He said, "You know, any collections or anything like that". And I said, "I gave those to you".

Q What did you have reference to when you made that reply to him?

A The letter of 4/11/80.

Q What's the exhibit number on that, if you have it?

A Exhibit 1, Defendant's 1. And I said, "I've given that to you".

Q Did you have the figure in mind at that point when you told him that?

A No, I didn't.

Q Do you remember the number at all?

A No, I don't remember what the figure was.

Q Then what happened with respect to that item?

A He said, I said, "I gave it to you before, you have that". And he said okay. He said, "Just a minute". Then he said, "Yes, I have that", and then he said, $22,332.87. I wrote that down on the side of the note. Then he said, "Interest earnings, any interest earnings, I want a list of those", and I wrote down the interest earnings.

Q And so on through the statement?

A That's right, he said what he wanted, like medical and insurance and donations.

Q Did you then get those papers to him so that he could use them in preparing the return?

A I came back to the office that very night and I did it that night.

Q Did you expect to be out of town for an extended period?

A I did.

Q Why?

A It was my understanding that the case that they had requested help on was a protracted matter and it was going to take a long period of time to try.

Q Did you expect to be out of town beyond the June 15th date when the extended time to file your return would expire?

A Yes, I did. That's why I called him and told him that we'd have to get another extension.

Q Did you get another extension?

A No, we didn't.

Q How did you attempt to provide for the contingency that you wouldn't be there when the return was due?

A The next day when I took this document to him I signed two copies of my 1040 form in blank.

Q I'm going to show you Government's exhibit 3 which is the original of your 1979 return and ask you whether it's your best recollection that was was signed in blank?

A I know it was signed in blank because I did not sign it after it was prepared.

Q What's the date that you wrote opposite your signature on the back of the first sheet, your Honor?

A June 15th.

Q Did you sign it on June 15th?

A No, I did not.

Q Your testimony is that you signed it early in May?

A Actually it was on May the 2nd. I know exactly when I signed.

Q When you signed it did you write in the date June 15th?

A Yes, I did.

Q Why?

A Because that was the day the extension was up.

Q Now looking still, Judge Claiborne, at Government's exhibit 31-A, there is an item on the first page of that exhibit with regard to the airplane; is that right? What was that airplane? Is that one you owned?

A Yes.

Q Where was it?

A My stepson was in Embry Aviation University, Embry-Riddle Aviation University in Florida and that's an aviation university where people train to be commercial pilots or on aircraft carriers and so forth and he was training to be a pilot and I bought a plane for him to use to get his hours of flying time in and I bought the plane for him and it cost me $11,500.

Q Now in your letter of 4/11/80 you had said that the plane cost $11,000, had you not?

A That's correct.

Q You have that before you?

A That's correct.

Q This document was prepared later, wasn't it?

A That's correct.

Q On May 2nd?

A May 2nd, I know exactly, the night of May 1st.

Q On this document you show a cost of $11,500, do you not?

A That is the correct figure.

Q Will you refer again to your letter to Mr. Wright, Government's exhibit 28, the one in which you listed the deposits. Do you have that, Judge?

A I have that.

Q There is a notation on that sheet as to the cost of the plant, isn't there?

A That's correct, $11,000 written by Mr. Wright.

Q Does that correspond to the figure you gave him on 4/11/80?

A Identical.

Q Is it different from the figure that's on the exhibit that you prepared on May 2nd, that is, exhibit 31-A?

A That's correct

Q Now, Judge Claiborne, I want to show you Government's exhibit 40 in evidence which is a copy of your financial disclosure report for the year 1979.

THE COURT: Before you question Judge Claiborne on that, Mr. Johnston, counsel will recall that Government's exhibit 41 has never been actually presented. It was offered and in its present form it was to be admitted.

And, members of the jury, may I say to you that I have seen, you recall the testimony of the lady from the Judicial Ethics Committee and she had a file here which pertained to Judge Claiborne and I have deleted certain materials in there because there were complaints about the type of report that was submitted but that's not relevant to this case.

Judge Claiborne is not on trial for filing an incomplete or erroneous financial disclosure form. He's on trial for having listed, checked the word "none" with respect to loans outstanding by him with respect to the Government's allegations that he was required by law to put down an item of $75,000.

So I have deducted -- in legal terms they call it retracted, but I don't want to say that to you because you might not understand certain information contained in Judge Damm's letter to Judge Claiborne dated August 12, 1981 and only for your information there is attached to that letter this so-called chart and you will find there only the relevant portions of that chart and then under date of October 21, 1981, Judge Claiborne replied to Judge Damm and he gave a lot of information.

But I have again deducted or eliminated anything except the items with respect to his report covering this law fee practice and also there is attached in here an amendment to his 1979 financial disclosure report which is dated March 31st, 1983, and signed by Judge Claiborne.

That exhibit will now be admitted as Government's exhibit 41 subject to the prior comments of counsel that were made.

MR. JOHNSTON: Thank you, your Honor. I was under the impression it was in evidence.

THE COURT: Well, I ruled that it would be but I never had a chance to tell the jury about it having been deleted, certain portions were deleted because I consider them irrelevant.

MR. JOHNSTON: I appreciate the explanation, Judge. May I have the exhibit again, please?

THE COURT: Yes. This is exhibit 41. I don't know that you even want to bother asking him questions about that.

MR. JOHNSTON: No. I do not need that, Judge. Thank you.

BY MR. JOHNSTON:

Q Now, Judge Claiborne, will you look at the financial disclosure report for 1979? Do you have that?

A Yes, I do.

Q That's Defendant's exhibit 2. I understand that's in evidence, your Honor. I checked with the clerk. What is the amount that's set forth in that report for your 1979 fees from legal practice?

A $23,050.76.

Q Are you able to explain at this time how you arrived at that figure?

A Yes.

Q I point out to you that's different from the 22,332.

A Yes, I know. How I arrived at that?

Q Are you able to explain the difference between the 22,332 which you say Mr. Wright gave you back on the telephone --

A I had a notation in my file that I had received in what I believe to be, trusting my memory, was a refund and I think it was from the State of Nevada employment tax division, I think.

Q Are you able to locate that now? Do you have that?

A No, and I had received a check in that amount of money.

Q Is it your present thought that you must have added that to the $22,000 --

A Yes.

Q -- to come up with the larger number?

A But I had written it -- you write notes to yourself to put in your financial disclosure file and I did that and so I added the amount. The note said something to the effect, "check on that amount", and that's what I did. I added it to the 22,000 as I always did because whatever pertained to the office -- well, I filed with my report as fees earned while in private practice.

Q Let me draw your attention, Judge Claiborne, to Schedule C of the 1979 return which is Government's exhibit 3 and ask you what amount is reported there as fees from your prior legal practice?

A $22,332.87.

Q That's the same number that you wrote on your Schedule for Mr. Wright which is exhibit 31?

A Yeah, that's the figure he gave me.

Q Did you ever see the return before it was filed after you signed it?

A No, I did not.

Q You didn't see it after it was made out at all? Were you aware when it was filed, what number was in it for your legal fees?

A No, I did not.

Q Did you ever sit down with Mr. Wright --

THE COURT: We're talking now about what return?

MR. JOHNSTON: 1979.

THE COURT: The tax return?

MR. JOHNSTON: Yes, your Honor.

THE COURT: All right.

MR. JOHNSTON: Sorry.

BY MR. JOHNSTON:

Q When Mr. Wright prepared tax returns for you over the years did you ever sit down with him and go over the return in detail after it was prepared and filed?

A Early we may have, maybe in the first five years that he did my returns, but after that we never did. I don't remember one single occasion that we ever sat down and went over the return.

He said, "Sign it", and I would take it and take it home to my wife, she'd sign it, I'd sign it.

Q Did you have any knowledge at all, Judge Claiborne, when that 1979 return was filed that it was incorrect?

A No, I did not.

Q Now, Judge Claiborne, did you subsequently go to Jerry Watson to have your return for the next year prepared?

A I did.

Q That would be the 1980 return?

A That's correct.

Q What were the circumstances of your first meeting with Jerry Watson?

A Sometime around the first of the year, 1981, I was with my ex-wife and she asked me to driver he by Mr. Watson's office, she wanted to drop off some document. And I did and we stopped there and I waited in the car and she ran up the stairs and in a few minutes she came back down and she said, "Mr. Watson wants to meet you. Do you have any objection?" And I said, "Not at all."

I went up the stairs and I saw the door, it was Creative Tax Planning, and I went in and I met Mr. Watson. I walked in the door and my former wife was ahead of me and when she turned where I could see Mr. Watson, I recognized him immediately.

I had seen him in my church and I said, I shook hands with him and I said, "I've seen you in my church." And he said, "That's right", and I sat down and we talked for sometime.

Q Did you make a decision at that time --

A Oh, no.

Q -- to have him do the 1980 return?

A Oh, no.

Q That came later?

A We talked about a lot of things and I don't think that I even -- I just touched on the fact that I had sold my home. Nothing in detail.

Q Were you thinking at that time of employing him to do the 1980 return?

A I wasn't thinking at that time of employing anybody at that time of the year or my life.

Q Would you tell us what the office was like? Would you tell us what the office was like? Would you describe the office to the ladies and gentlemen of the jury?

A It's a usual and ordinary looking accountant's office. You go in and there is a receptionist sitting behind a desk. His office is the first office then on the left down a hallway. There is another office on the left-hand side of the hallway past his office.

Then there appears to be on the right-hand side, never been in there, but I would notice from the activities appears to be a room, stationery room. On down the hallway at the end of the hallway is two offices and one is quite large and contained a conference table. It's not a huge office but it's rather large as those offices go.

Q Were you impressed with the office?

A Well, I don't know whether I was impressed with the offices or not. Goodness, I was a lawyer and had been in a lot of offices and I wasn't -- his offices made no impression on me. It was a standard office.

Q Were you under the impression at that time that he was an accountant?

A Yes, I was. I was more impressed with the conversation that I had heard with him on the telephone than I was with anything else on that visit.

Q Did you subsequently decide to ask him to prepare your 1980 return?

A Yes, I did.

Q Was there an application for an automatic extention of time to file that return filed?

A Yes.

Q I want to show you Government's exhibit 4 and ask you if that's that application and whether that's your signature?

A Yes.

Q Did you prepare that?

A No, I did not.

Q Who prepared it?

A Mr. Watson prepared it.

Q Do you know for sure whether it was Mr. Watson or someone else in his office?

A Well, I know it was not prepared by me and I know that I signed it in his office on I presume the date that it's dated.

Q Would you have known enough about the material to prepare such an application?

A No, I would not have.

Q I'll show you Government's exhibit 37 which is a check made payable to the IRS for $20,817.59. Is that amount shown as being due with the application? Can you see that amount on there?

A Yes, it's the identical amount.

Q Is this the check that you issued?

A Yes, that is correct.

Q And the date on the check?

A Is April 13th, '81, which the application for automatic extension is April 13, 1981.

Q The same day?

A The Same day.

Q Now, Judge Claiborne, did you file an application -- I'm sorry -- did you file a financial disclosure report for the year 1980?

A Yes, I did.

Q I'll show you Defendant's exhibit 2 which is a copy of that report and ask you if you recognize that?

A Yes, I do.

Q What amount is set forth on that application for your fees received in 1980?

A $88,500.

Q When was that filed? When was it signed, first?

A May 15th, 1981.

Q Is there a stamp on it indicating when it was received?

A May 16th, 1981.

Q All right, sir. I want to show you Defendant's exhibit

41. These are the yellow sheets that Mr. Watson identified earlier today and ask you whether the first portion of that at least is in your handwriting?

A Yes, the first four paragraphs are in my handwriting.

Q Would you read item number 2, please?

Q "Income from private practice before appointment in 1978 payable and received in 1980, $88,500.

Q Is that the same figure that appears on the financial disclosure report?

A It is.

Q Which of these was done first?

A Which one first?

Q Are you able to tell us which document was written first?

A Yes, the financial statement.

Q How can you be sure of that?

A From memory.

Q All right, sir. What was the purpose of these yellow sheets that you're looking at?

A He had asked me, he designated certain things he wanted like incone tax returns from 1973 up through '79. He wanted a list of everything that's in this document is what he asked for.

Q Are you able to tell the ladies and gentlemen of the --

A All the costs and expenses of the improvements of the property that I sold and so forth.

Q Are you able to tell the ladies and gentlemen of the jury when you made up those sheets?

A The date?

Q Well, as nearly as you can, when was that work done?

A Well, we got an extension.

Q When did the extension expire?

A June 15th.

Q Can you say when that work was done in reference to the June 15th dte?

A I'd say that this was prepared in all probability at just about the third week in April would be my guess.

Q Did you deliver those papers to Mr. Watson or to his office?

A I did.

Q Is there some writing on those papers that is not in your hand, Judge Claiborne?

A Oh, yes.

Q I want to direct your attention specifically -- let me see. I think we have a blow-up of this one too. Maybe I've already used it. May I put out the easel, Defendant's 41-A, which is a blow-up of the first page of that exhibit so that the members of the jury can follow it?

I want to direct your attention, Judge Claiborne, to some notes that appear at the bottom of that sheet numbered 5 and 6. Are those in your handwriting?

A No.

Q What about these diagrams that appear on there, did you put those on the sheet?

A The bottom diagram is mine.

Q Can you tell us very briefly what that represents or how it came to be placed on this paper? You have the original, Judge. Let the jury watch this. Do you know when that was done?

A I don't know the exact date it was done, but I do know this: That we were discussing the physical lay-out of my property that I had in Las Vegas that I had sold.

Q Where did this discussion take place?

A In his office and he drew the first -- I was trying to explain to him that there was three parcels of property and he kept saying, "But there's two tracts," and I kept saying, "But there's three parcels and two tracts".

Q What had you sold?

A My home.

Q Was that part of the property?

A That's correct. Next to my home, with my home I also had five acres because my home and acreage are altogether. So he drew up the two. "In other words, you've got two parcels of property?" And I said, "No". In other words, he said, "You have three?" and I said, "No", and he drew the upper part, the right-hand side.

Q Can you tell us which was was drawn first?

A The one on the left.

Q He drew that?

A Yes.

Q And he was asking you whether that was the --

A "In other words, the two parcels?" and I said, "No, that isn't it. There's three parcels of property".

Q And then these two were separated. Did he draw that for you?

A He drew that and he said, "Oh, there's three parcels of property and you sold two?" And I said, "No". So I drew him a picture of the whole thing.

Q The large one, is that your drawing?

A Yes. I'm the artist of that.

Q Would you tell us what this is intended to depict?

A I guess you'd call it a plot plan of my land and the property that I sold laid out.

Q The outside line, is that the total property; is that what that represents?

A That's correct.

Q There's a curved line down here and then a straight line?

A I did not draw the cruved line. That curved line had been put on some other time.

Q You drew the straight line?

A I did, yeah.

Q What is this material in the middle supposed to indicate?

A You mean the circle?

A We've got a circle and vertical line and a small square over on the right side. Could you tell us what that is?

A The circle is a training track that I had -- I have been a horseman all my life and I had a training tract for colts that I worked.

Q What's the square over here on the right? Is that the house?

A Yes.

Q What are these heavy vertical lines just briefly, if you recall?

A Those are property lines.

Q So you're demonstrating to him the approximate lines of the three parcels; is that a fair statement?

A That's right.

Q After you delivered thse sheets to Jerry Wright, did they ever come back into your possession before the tax return was filed -- Watson, I'm sorry. Thank you, very much. It's getting a little late, your Honor.

After you delivered these sheets to Jerry Watson did they ever -- were they ever back in your possession before the return was prepared and filed?

A No, no.

Q Did they ultimately come back to you?

A Oh, yeah.

Q When?

A He brought part of my file into my office on, I believe it was the 19th of June when he brought my copy of the return into the office.

Q And it's your recollection he returned it to you at that time?

A That's correct.

Q Were those papers ever back in Mr. Wright's possession until some consideration --

THE COURT: Mr. Wright again.

MR. JOHNSTON: I'm sorry, your Honor. I'm really falling apart here. Let me start again.

BY MR. JOHNSTON:

Q How long after he returned the papers to you did they remain in your possession, Judge?

A They've been in my possession ever since.

Q I want to show you the 1980 return which is marked --

A That is save and except the time the Government agents were testing it.

Q And they were -- yeah. I'll show you Government's exhibit 5 which is the 1980 return. Is that the return that was prepared in Mr. Watson's office?

A That's correct.

Q Do you recall signing the return, Judge?

A Yes, I do.

Q Where did you sign it?

A I signed it in his office.

Q Do you remember when you signed it?

A I signed it on June 15th.

Q Was Mr. Watson there when you signed it?

A No, he was not.

Q Whom did you deal with when you signed the return?

A I talked to a woman that was employed by him by the name of Peggy and I do not know what her last name is.

Q Were you given a copy at the time you signed the original?

A No, I was not.

Q Was the original stapled or clipped together at that time?

A It had a paper clip on it. The original had a paper clip, no staple.

Q At the time you signed the return, did you sit down and go through it in detail?

A No, I did not.

Q Did you spend any time looking at it?

A No, I did not.

Q Did you thumb through it even?

A Well, I may have. I mean, to study it, I did not. I may have thumbed through it. I seem to have a recollection of standing there and going through the motions.

Q Did you focus on any particular item?

A No.

Q Did you focus on Schedule D?

A No.

Q Were you aware at that time of what was put on the Schedule D?

A No.

Q Do you have that there, Judge, so you can see it?

A Since this thing started I've looked and talked about Schedule D so much I hear it and see it in my sleep. I know what it looks like.

Q Was there a time later when you received a copy of that return?

A That is correct, on the 19th of June.

Q Where?

A In my law office -- in my chambers in the courthouse.

Q What happened on that day?

A He brought, Mr. Watson brought my copy of the return in with some of the documents that I had furnished him and a bill for $1800.

Q Had you already made a payment to him on the account?

A $200 when I hired him.

Q Did you have a conversation with Mr. Watson on that day?

A I did.

Q What was said?

A He said, "Here's your return, your copy of the return and your work papers". That's what he said. And he said, "Here is your bill and I appreciate having had the opportunity to do this work for you and I hope that when you go to sell your property over on Pinehurst that you give me an opportunity because I'm also a real estate broker".

Q Did he go through the return with you on that occasion?

A And he said -- he's got the bill in his hand. My first impression was it was too high but then I recalled the amount of time that I spent getting all of this information together for him and the fact that he asked me to bring the '73 to '79 returns and I immediately thought, well, if he went through it and analyzed all those returns, this is not too much money.

So I didn't say anything. I pulled out my check book and I wrote him a check. All the time that I'm writing the check he is talking about he's a real estate broker and he wants a shot at selling my property when I sell it.

I said he did a good job and I thanked him. I said, "I thank you for your work". Then was when I thumbed through it.

Q How much time did you spend looking at it?

A Oh, this whole conversation couldn't have taken over ten minutes at the most.

Q Was court in session that day?

A I don't know. I have a recollection of -- your mind plays tricks especially when you are in that kind of work. My recollection is I had some kind of a pre-trial conference which means lawyers in the jury room, but that may not have been true.

Q Did you have any conversation with him on that day when he gave you a copy about the details of the Schedule D in the return? Did you talk about the Schedule D specifically that day?

A No, I'm sure of that.

Q Did you have any feeling at all or any belief or sense that the return was incorrect when you signed the original, Judge Claiborne?

A Absolutely not. If I had carefully noticed Schedule D, Mr. Johnston, I would have never signed the return.

Q Why?

A In the first instance, if -- I didn't even understand what is written on Schedule D.

Q At the time you signed the return?

A Right. The fact that it had markings down on it, it said "Type here," indicated to me that this was not a finished product.

Q Were you aware of that when you signed the original?

A No, I was not aware of it.

Q Were you aware of it when he brought you the group --

A No, I was not. I later on became aware of it and when I became aware of it I asked for an explanation of it because I did not understand it then.

Q I want to pick up one item, Judge, that I meant to ask you about and it takes us back a bit. Do you have Government's exhibit 29?

A Yes, I do.

Q Are those up here?

A Yes, they are.

Q I asked you about the first one which went to Stanwell Mortgage and is dated March 7th. Did you receive a copy of that from Mr. Wright?

A What is the question, Mr. Johnston?

Q Did you receive a copy of the March 7th letter from Mr. Wright?

A Oh, yes.

Q And the other two letters that are included in Government's exhibit 29, are they identical as to the text of the letters?

A Yes.

Q Who are they addressed to?

A They are addressed to First National Bank and to First Western Savings & Loan.

Q What is the figure that's set forth in all three of those letters for your earnings from the private practice of law for the year 1979?

A $45,371.93 in all three letters.

Q And the second and third letters are dated May 22, 1980?

A That's correct.

Q That was after your 4/11/80 letter, wasn't it?

A Oh, yes.

MR. JOHNSTON: Your Honor, I don't think I'm going to quite be finished with Judge Claiborne today. I don't think I have very much more, but I don't think I'll be finished by the 5:00 o'clock hour, if that's of interest to the Court.

THE COURT: In other words, you're rundown for the present?

MR. JOHNSTON: I'm getting rundown and I think my client is getting rundown and it's getting close to the end of the day.

THE COURT: I think you ought to confer with your co-counsel.

MR. JOHNSTON: They will just remind me of things I've forgotten.

THE COURT: Ladies and gentlemen of the jury, you may retire. You are excused until 9:30 o'clock tomorrow morning.

(The proceedings continued in the abense of the jury.)

THE COURT: I have the Defendant's request for charge and I believe the only decision is the one that you have attached to the end; is that correct, gentlemen?

MR. GOODMAN: That's correct.

THE COURT: There may be another paragraph in there I don't remember giving to the previous jury, but I don't know. I may be wrong.

MR. JOHNSTON: I drafted that and it's based essentially on the cases I've cited in my memorandum.

THE COURT: Well, I have the one case and that is from the Supreme Court and that's the last word on the subject.

MR. JOHNSTON: The other cases are a little more specifically on point on that specific instruction, your Honor, the ones I cite. I invite your Honor's attention to the memorandum I filed previously because it calls your attention to the case and some potential problems.

THE COURT: The difficulty is the Pomponio case was decided in 1976, the only one I was interested in. The United States v. Doan case, which came down in 1983, if that discusses Pomponio, but go back to the 1950's.

MR. JOHNSTON: I simply suggest at this point that your Honor look at the memorandum again and that will do better than any oral comment I could make at this point.

THE COURT: I appreciate your kindness, but I didn't bring all the memorandums from Norfolk, Virginia. Is it in the file here?

MR. JOHNSTON: No, sir. It's one that I filed in the trial for a motion in support of acquittal just a couple of days ago.

THE COURT: Yes, I do have that. I beg your pardon. All right. Thank you, Judge. I want to return this to you. This is part of your transcript, I think, Mr. Johnston.

MR. JOHNSTON: Thank you very much, your Honor.

THE COURT: Anything further then, gentlemen? If not, we'll be in recess until tomorrow morning at 9:30.

(Whereupon the proceedings recessed until 9:30 a.m., Tuesday, August 7, 1984.)

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Ted Binion	679G	685H	694G	695H	696G
David Goldstein	697R	702H			
Loretta Lydia Powell	704G				
David Sumner Moore	710R 733R	724S 742S	743R		
Joanne L. Becker	744R				
Carl S. Goebel	765R				
Louis Wyman	770G				
Jerry D. Watson	774J	782S	813J	814S	815J
Harry E. Claiborne	816J				

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4	Check dated 4/11/80 for $8,000	868	868

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, MARY E. BELL, Certified Shorthand Reporter Number 98, do hereby certify that I was present on the 6th day of August, 1984, at the hour of 9:30 o'clock a.m. thereof, in the United States District Court, District of Nevada, Reno, Nevada, and reported the proceedings in the within-entitled cause in stenotype notes, which were thereafter transcribed by me;

That the foregoing transcript, consisting of pages 678 through 902, contains a full, true and complete transcription of my said stenotype notes, and is a full, true and correct record of said proceedings had at said time and place.

DATED at Carson City, Nevada, this 13th day of September, 1984.

Mary E. Bell
MARY E. BELL, CSR, RPR, CP
Nevada CSR #98

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. HARRY EUGENE CLAIBORNE, Defendant.	Case No. CR-R-83-57-WEH Reno, Nevada Monday, August 6, 1984 1:30 o;clock, P.M.

TRANSCRIPT OF TESTIMONY OF JERRY D. WATSON
BEFORE THE HONORABLE WALTER E. HOFFMAN

APPEARANCES:

For the Plaintiff:	STEVEN A. SHAW, ESQ. WILLIAM C. HENDRICKS, III, ESQ. JAN N. LITTLE, ESQ. Public Integrity Section Criminal Division F Street Station Washington, D. C.
For the Defendant:	OSCAR B. GOODMAN, ESQ. WILLIAM RAGGIO, ESQ. RICHARD JOHNSTON, ESQ. 520 South Fourth Street Las Vegas, Nevada
Reported by:	CAPITOL REPORTERS Official Court Reporters BY: MARY E. BELL, CSR #98 108 West Telegraph Street Carson City, Nevada 89701 (702) 882-5322

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By
Deputy Clerk

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RENO, NEVADA, MONDAY, AUGUST 6, 1984, 1:30 P.M. O'CLOCK

---oOo---

JERRY D. WATSON

produced as a witness on behalf of Defendant, having been first duly sworn, was examined and testified as follows:

THE COURT: All jurors are present. All right, sir. The witness has been sworn, ladies and gentlemen of the jury. Will you please give your full name and spell your last name, sir?

THE WITNESS: Jerry D. Watson, W-a-t-s-o-n.

DIRECT EXAMINATION

BY MR. JOHNSTON:

Q Mr. Watson, where do you reside?

A 755 Appletree Court, Henderson, Nevada.

Q What is your business or occupation?

A I'm a real estate broker, salesman and I own a tax practice and I own a business consulting company.

Q Where is your business located?

A 1700 East Desert Inn Road, Suite 412, Las Vegas, Nevada.

Q How long have you had a business at that address?

A Since 1979. I was in another location prior to that.

Q Will you tell us what kind of work is done in your business?

A We do bookkeeping for small businesses, we do income tax preparation, we handle audits where the IRS is inquiring about your taxes, we sell real estate and advice on investments and tax shelters.

Q Are you yourself an accountant, Mr. Watson?

A No, sir, I am not.

Q What is your particular specialty?

A Real estate.

Q Are you a broker?

A Yes, I am.

Q Are you also a certified life underwriter?

A Yes, I am.

Q Would you explain to the jury what that is?

A That is a professional designation that I received from the American College of Life Underwriting in Grandmark, Pennsylvania. The gist of that course deals with advanced estate planning and finance, economics and business as well as the application of insurance products to individual needs, particularly in the area of estate planning.

Q How many employees do you have in your business at the present time?

A Two.

Q How many did you have in '81?

A I had two.

Q Was she a former wife of Judge Claiborne?
A Yes, she was.
Q All right, sir. Following that meeting did Judge Claiborne return to discuss with you the preparation of his 1980 income tax return?
A Yes, he did.
Q Was that return subsequently prepared in your office?
A Yes, sir, it was.
Q I'm going to hand you Government Exhibit 5 in evidence and ask you if that's the income tax return that was prepared in your office?
A Yes, sir, it is.
Q Now, in connection with the preparation of that return, did Judge Claiborne furnish you with information that was needed for return?
A Yes, sir, he did.
Q I'm going to show you a group of sheets on lined yellow paper that's been marked previously for identification as Defendant's Exhibit 41 and ask you if these are the, among the papers, at least, that Judge Claiborne provided to your office?
A Yes sir, they are.

MR. JOHNSTON: We'll offer this exhibit in evidence, your Honor.

THE COURT: All right, let it be admitted. That was not in as a Defendant's Exhibit.

MR. JOHNSTON: Previously marked, your Honor.

THE COURT: Previously marked Government's Exhibit 41 will now be marked Defendant's Exhibit 4, the next exhibit.

MR. JOHNSTON: It was originally a Defendant's Exhibit. It was Defendant's Exhibit 41.

THE COURT: Do you want it the same number?

MR. JOHNSTON: I think it's simplier to keep it as the same number as long as it doesn't confuse anyone.

THE COURT: You previously said it was a Government Exhibit.

MR. JOHNSTON: I misspoke myself, your Honor.

THE COURT: Defendant's Exhibit 41 will be admitted as Defendant's Exhibit 41.

(Defendant's Exhibit 41 was marked for identification and admitted into evidence.)

BY MR. JOHNSTON:

Q Mr. Watson, I'm going to show you what purports to be an enlargement of what purports to be the first page of that and ask you if that appears to be a copy of the first page of that exhibit?

A Yes, sir, it is.

MR. SHAW: Your Honor, perhaps he'd like to move it into evidence.

MR. JOHNSTON: May we have it marked and offered into evidence?

THE COURT: Yes. That will be Defendant's Exhibit 41A.

MR. JOHNSTON: Yes, we will do that.

(Defendant's Exhibit 41A was marked for identification and admitted into evidence.)

BY MR. JOHNSTON:

Q Are you able to recall, Mr. Watson, when the papers that you hold in Defendant's Exhibit 41 were provided in your office?

A I can't give the exact date but this was provided our office sometime between the first meeting with Judge Claiborne and the time the tax return was actually prepared. I would judge that to have been in April or May of 1981.

Q Did those papers remain continually in your office from the time he first turned them over to you until after the return was prepared?

A That's correct.

Q What happened to them after the return was prepared?

A They were returned to Judge Claiborne.

Q All right, sir. I want to direct your attention to the very top part of this Exhibit 41A which is the first page and ask you first when the first item, wages as Federal Judge, $54,499.92, whether that was on the papers when Judge Claiborne brought them to your office?

A Yes, it was.

A The next the item is income from private practice before appointed in 1978, payable and received in 1980 in the amount of $88,500.

Q Was that entry also on the paper when the papers were delivered to your office?

A Yes, it was.

Q I point out to you, Mr. Watson, that the number 88,500 on the original at least appears to be in different ink. Is that your impression?

A Yes, it is.

Q Are you quite positive that that number was on the papers when they were delivered to your office?

A I believe that it was.

Q Were these papers used by your office in the preparation of the 1980 return?

A Yes, sir, they were.

Q Were the papers subsequently returned to Judge Claiborne?

A Yes, sir, they were.

Q When was that?

A As I previously stated, sometime -- oh, when were the papers returned?

Q When were they returned to him? Were they retained in your office for an extended period of time?

A Not an extended period of time but sometime after the tax return was prepared. It is our practice to return the papers as soon as it is expedient and appropriate.

Q Was that practice followed in this case?

A Yes, sir, it was.

Q Can you tell us when the return was filed? You have the return there.

A The return was filed in June. It was dated June the 15th and it was due to be filed June the 15th of 1981.

Q Would you look on the face of the first page and see if there's a stamp indicating when it was received by the Internal Revenue Service?

A It was received June the 16th, 1981 in Ogden, Utah.

Q I want to direct your attention to Schedule D of the return, Mr. Watson. Would you look at Schedule D, please? Is that in handwriting or typing?

A That's in handwriting.

Q Is that your handwriting?

A No, sir, it's not.

Q Whose handwriting is that?

A That's the handwriting of my employee at the time, Miss Charlotte Travaglia, T-r-a-v-a-g-l-i-a.

Q Is Mr. Travaglia still employed by you?

A No, sir, she's not.

Q Do you know the state of her health at present?

A Miss Travaglia has cancer.

Q Was the number $88,500 which appears on the first page of

Defendant's Exhibit 41 taken into account in the preparation of the Schedule D?
A Yes, sir, it was. That's the meaning of that asterisk on the side of the 88,500.
Q You're referring to this asterisk here?
A Yes, I am.
Q Is there something at the bottom of the page that's related to that?
A Yes, sir, it's item number 5.
Q Can you read that to the jury, please?
A "What I see in this business transaction is fair market value was not considered on the book sale. He had a gain from the sale because book value was used as a basis. If he has knowledge of their fair market value we can go for it on the '80 return and apply that to item number two, income", asterisk.
Q Now would you look at Schedule D of the return, please. There's some handwriting which you said is in Miss Travaglia's hand. May I just approach the witness to point out what I want him to read, your Honor? If you are able to, Mr. Watson, would you read this portion in the upper left-hand corner?
A "Accounts receivable for law practice left upon the confirmation to Judicial U.S. Court appointment, 1978".
Q The footnote, so to speak, on the yellow sheet which you read, Mr. Watson, whose handwriting is that?

read, Mr. Watson, whose handwriting is that?

A That's Mrs. Travaglia's.

MR. JOHNSTON: You may cross-examine.

CROSS-EXAMINATION

BY MR. SHAW:

Q Mr. Watson, what fee did you charge Judge Claiborne for preparing his 1980 return?

A His fee for that service that year was $2,000.

Q You didn't do any bookkeeping or anything, it was strictly that individual personal tax return; is that correct?

A I didn't do any bookkeeping for him that year.

Q It was the tax return only that was $2,000?

A That's correct.

Q Did he tell you how much the previous accountant has been charging him?

A No.

MR. JOHNSTON: Object to as irrelevant.

THE COURT: Overruled. If he told him.

BY MR. SHAW:

Q Did he tell you?

A No, he didn't. I never asked.

Q Did you ask?

MR. JOHNSTON: Object to as hearsay.

THE COURT: I'll sustain that objection.

BY MR. SHAW:

Q Part of your determination, that is part of your thought process in how you determine a fee to charge Judge Claiborne and all of your clients is how much you can do for them; is that correct?

A That has a bearing on it, of course.

Q And you felt that you did a lot for him in this case I take it by charging him $2,000?

A I thought so.

Q Did he pay you the $2,000?

A Yes, he did.

Q Did he object to that fee at all?

A No, sir, he didn't.

Q Did he seem surprised?

A Not at all.

Q So I take it you went over with him what it was that you did for him to justify such a fee?

A I went over that with him before we started doing the tax return.

Q You gave him an estimate as to what it was you felt you could do for him?

A As I recall we did and he paid me a retainer.

Q What was the retainer?

A I believe it was a couple hundred dollars.

Q Did you give him an estimate at that time as to how much of a refund he was going to get?

A   No, I don't believe I did.

Q   That would certainly be probably the most important factor to a tax preparer in determining what you could do?

A   It was virtually impossible to give the man an estimated refund by looking at this superficial material.

Q   When did you give him the $2,000 estimate?

A   I invoiced him for the $2,000 at the time I delivered his copies of the tax returns.

Q   So you had an interest in showing off to him all the good work you'd done for him to justify that $2,000?

A   I don't recall having any interest in showing off.

Q   But you were proud of it to be able to get him such a large tax refund, were you not?

A   Perfectly normal.

Q   And it would be something that you would certainly want your client to know so that he would not be offended by you charging him $2,000?

A   I don't really use that as a basis for determination of my fees, Mr. Shaw.

Q   Well, it's a factor, though, is it not? It's a significant factor?

A   You said significant, not me.

Q   Is it a factor?

A   It is a factor.

Q   Could you tell us a little about your educational background?

A Yes. I graduated from high school, I attended a college, Altas in Oklahoma, Altas Junior College. I took various courses at several universities dealing with insurance. I obtained a small degree called a graduate of the life underwriters training counsel, parts one and two. I proceeded on to another course --

Q Excuse me, if you could take it one at a time?

A That is one at a time.

Q The course is a life insurance course?

A It's an educational course in life insurance.

Q Okay, you may continue.

A I graduated from the life underwriters training counsel, course one. I proceeded on to graduate from the extension of that court, course two. Then I graduated in a special life insurance training course involving the underwriting of health insurance. Shortly after that I began to attend classes toward earning might CLU designation which I subsequently earned in 1968.

Q CLU is a life insurance certification; is that correct?

A That's correct.

Q You may continue.

A Outside of that I've attended various courses on real estate, tax application, just refresher courses you might say.

Q You have a degree from Altas Oklahoma Junior College?

A No, sir, I do not.

Q Could you tell us after you got out of Altas Oklahoma Junior College what was your first job?

A My first job after leaving Altas Junior College was, I believe you brought it to my attention, I'd forgotten about it, I was licensed for one month with the First Pyramid Life Insurance Company in Little Rock, Arkansas. Then I became an agent with the Metropolitan Life Insurance Company in 1961. I worked for Metropolitan Life Insurance Company in various positions until March 1977.

Q Did you have any other jobs between 1960 and 1977?

A From 1977? Yes.

Q From 1977 back. I mean was that exclusively with Metropolitan Life Insurance Company?

A Well, from 1960 to 1976, '77, I worked as a grocery store clerk. When I was a young boy, I worked for Kerr, McGee Oil Company in New York. I worked for Nox Lee Steel Company. I worked on many farms and ranches.

Q Those jobs are after you got out of junior college?

A No, this was my work career. As I recall, after that I was working for a special sales company while I was attending college on a part-time basis.

Q Is that the encylopedia sales?

A Yes, I sold encyclopedias and I also sold a set of religious books and records.

Q What was the year you left Metropolitan Life?

A 1977.

Q Why did you leave Metropolitan Life?

MR. JOHNSTON: Object to as irrelevant. If this is going to be pursued I asked to be heard outside the presence of the jury.

THE COURT: Mr. Shaw, I believe I ruled on that at the last trial, did I not?

MR. SHAW: I believe the ruling went to the background as opposed to the method of termination and that's all I was going into.

MR. JOHNSTON: My recollection from the transcript is very clear. My objection to that question, more pointed question was sustained at the last trial.

THE COURT: Let me see the transcript of that previous examination of Mr. Watson.

MR. JOHNSTON: Let me see if I can find it. Would you like the transcript, your Honor, or would you like me to locate it?

THE COURT: Just hand it up to me. Can anyone suggest to me about what page it is rather than my having to wade through about 1,000 pages here?

MR. JOHNSTON: The testimony is labeled at the top of each page whether it's direct or cross, your Honor, and it would be fairly early in the cross-examination, I think. I don't have a page number for it.

MR. SHAW: 2692, your Honor, line 21.

THE COURT: Well, the previous question at the last trial was a little bit different. The question now is why did he leave the Metropolitan Life Insurance Company.

MR. SHAW: That is correct.

THE COURT: I will permit that but let's not follow up with the next one, Mr. Shaw.

MR. SHAW: Very well, your Honor.

BY MR. SHAW:

Q Why did you leave the Metropolitan Life Insurance Company?

A I was terminated.

Q Voluntarily?

A Involuntarily --

MR. JOHNSTON: I'm sorry, your Honor, I'll object.

MR. SHAW: I think that's consistent with the Court's ruling. I didn't get a direct answer.

THE COURT: That's consistent. Involuntarily, I believe he said.

THE WITNESS: Mutual agreement.

BY MR. SHAW:

Q What other types of businesses were you starting at that time?

A I was in a company, the company that does exactly the same thing I do now, bookkeeping, tax preparation, audits, Q A little bit of everything?

MR. JOHNSTON: Object to and I'll ask that that be stricken, your Honor.

THE COURT: Yes. Don't testify, Mr. Shaw, ask questions.

MR. SHAW: Very well.

BY MR. SHAW:

Q I believe you testified that you first saw Judge Claiborne in roughly April or May of 1981, you first saw him professionally, I mean as a client?

A Yes. It was sometime in I would say March or April of 1981 was the first time he came to my office for professional assistance.

Q And you discussed with him at that time the tax return that eventually he decided he wanted you to prepare for him?

A That's correct.

Q Did he tell you that he made that decision in that first meeting with you or did he tell you that decision came later?

MR. JOHNSTON: Object to on the ground of hearsay.

THE COURT: Overruled. You may answer.

THE WITNESS: Oh, I'm sorry. I believe that we tentatively made a decision on the first meeting that my firm would prepare his tax return.

BY MR. SHAW:

Q How long was that first meeting?

Q How long was that first meeting?

A I couldn't say, that's four years ago. Probably half hour, 45 minutes.

Q Did you discuss his tax situation generally with him?

A Primarily we discussed his real estate transaction.

Q That is the sale of his residence?

A That's correct.

Q Was that of concern to him at that time?

A Yes, sir, it was.

Q Did he tell you that he had spoken with other people, other accountants concerning that matter?

A I believe he did.

Q What advice did you give him about the house at that time?

A I discussed with him how you go about determining your tax liability when you sell a personal residence and you purchase another one and we discussed in general the factors that go into making that kind of a determination.

Q Did you also discuss with him his situation as having -- well, strike that.

Did you discuss with him his earlier law practice?

A I don't recall if we did on the first meeting.

Q During that first meeting did you know that he was a Federal Judge?

A Yes, I did.

Q Did you know that he had previously been an attorney?

A Yes, I did.

Q Did you know when he closed his law office and became a Judge?

A That's correct.

Q When was that?

A When did I know that?

Q No, when was the date that he terminated his law practice and became a Judge?

A I believe it was about September of 1978.

Q You knew that at that time?

A Yes, I knew that.

Q Did you discuss with him in that first meeting if any tax consequences that he had?

A I believe there was some discussion. I couldn't testify exactly what that concerned but it's entirely possible that we discussed some aspect of his law practice and what he might have done with it.

Q Were some aspects of that law practice the tax consequences of it having been closed two or three years earlier?

A Ultimately on this tax return there was some consequences of closing that law practice.

Q Before we get to ultimately, what about that first meeting?

A It seems to me like that discussion came up in one of our later meetings.

Q How many meetings did you have with him?

A I can't recall. I think I previously testified to more than three and less than six.

Q How about your present memory?

A I would say the same. I can't remember exactly how many meetings we had but it was more than three and less than six.

Q Were all the of those meetings in your office?

A No, they were not.

Q How many were in your office?

A I couldn't give you an exact answer, Mr. Shaw.

Q Give me an estimate.

A I beg your pardon?

Q Give me an estimate if you could, please. Half of them?

A One or more.

Q Where with the other meetings?

A Well, we talked on the phone and I believe I went to his chambers on one occasion. I can't remember specifically at this time how many times I went to his office or he came to my office or how many times we talked on the phone.

Q Your estimate of three to six meetings included telephone conversations?

A Yes.

Q So it was three to six total contacts you had with him?

A Correct.

Q Do you recall --

THE COURT: It was more than three or less than six. It had to be either four or five, wouldn't it?

THE WITNESS: Could have been, your Honor. I just can't remember exactly how many meetings we had.

MR. SHAW: Thank you, your Honor, I was working on that.

BY MR. SHAW:

Q Did you write Judge Claiborne a letter of that first meeting you had with him?

A Yes, I did.

Q Let me show you what's beed marked as Government's Exhibit 47 which appears to be a letter with the letterhead of Creative Tax Planning, April 6, 1981. Is that a letter that you wrote to him?

A That's correct.

Q Who is Creative Tax Planning, by the way?

A Creative Tax Planning is the name under which my company did business.

Q Was that name on your door?

A Yes, it was.

Q And it was on your door at the time Judge Claiborne walked into it?

A I believe it was.

Q Your company is known by other names as well; is that right?

A It has been.

Q What other names?

A Let's see. We have been -- my first name was PBI Tax Control. Then I changed it to Lamb/Watson Consulting. And then I changed it to Creative Tax Planning.

Q But the name --

A And now I call it Creative Tax and Business Planning.

Q You're creative in both areas now?

A I feel so.

Q The words Creative Tax Planning, though, were visible on your office door as Judge Claiborne walked in to it in early 1981 into your office?

A I've got a sign on that office door and I can't remember exactly when I bought it.

Q But you were using that name as your business name in the spring of 1981; is that correct?

A April of 1986 I had letterhead that displayed that name. I don't remember when I put the sign on the door.

THE COURT: 1986?

THE WITNESS: 1976.

THE COURT: I didn't think we'd gotten to that stage yet.

BY MR. SHAW:

Q Were you listed in the telephone book as Creative Tax

Planning in the spring of 1981?

MR. JOHNSTON: Objected to as irrelevant, your Honor.

THE COURT: Overruled.

BY MR. SHAW:

Q You may answer the question.

A I don't know. I've been listed in the phone book in seven or eight different places and I really couldn't swear. I'm listed in enough places that I hope nearly anyone can find me in any event if they wanted me.

Q Were you at that time listed in the yellow pages as a tax preparer?

A Yes, tax preparing and bookkeeping and business consultation as I recall.

Q And insurance and real estate?

A Insurance. I don't think I was listed as real estate.

Q Now if we could go back a moment to exhibit number, is that 49 in front of you, on the folder?

A Exhibit number 47.

Q That is a letter that you wrote to Judge Claiborne on or about April 6th, 1981?

A That is correct.

Q That was written to him after you had the first meeting with him in your office?

A That is correct.

Q And it was written to him to memorialize certain information that you discussed concerning the preparation of his 1980 taxes?

A That's correct.

Q Is that your signature at the bottom of that?

A Yes, it is.

Q Signed Jerry D. Watson, CLU?

A That's correct.

Q So your identifying yourself on this letter to Judge Claiborne as being a life insurance underwriter?

A That's correct.

MR. SHAW: I'd move exhibit 47, your Honor.

MR. JOHNSTON: No objection, your Honor.

THE COURT: Do you have wish to keep the number the same?

MR. SHAW: I believe that's a new number for the government.

THE COURT: I beg your pardon. Let the record reflect it is admitted.

(Government's Exhibit 47 was admitted into evidence.)

BY MR. SHAW:

Q This is addressed to Harry Claiborne at his chambers in Las Vegas; is that correct?

A That's correct.

Q Could you read the third paragraph?

A "The possibility of taking a loss on your business looks good. We will assemble supporting information with your help to determine the amount of the loss".

Q Does that refresh your recollection any further as to the extent that you discussed with him in that first meeting the possibility of taking a loss on his business?

A As I previously testified I do believe that that was touched upon in the first meeting and this letter just affirmed that what I told you was correct.

Q Did he ever write you a written response to this letter?

A He didn't write to me a written response. He brought me in boxes and reams of material.

Q You were asking him in this letter that you needed some supporting information about writing off the business in 1978; is that right?

A As well as supporting information in preparation for the entire return, Mr. Shaw.

Q No, I'm directing your attention to that paragraph right now.

A Yes, in addition to that.

Q It's part of the information he gave you? He gave you a number of his earlier tax returns, did he not?

A That's correct.

Q Do you recall the years of those returns that he gave you?

A Well, in the letter it says that we requested 1973 through

1979.

Q Did he give those to you?

A And as I recall he gave me those.

Q I take it would include 1978?

A That would be included.

Q Did you read the 1978 return?

A You mean thoroughly go through it a page at a time?

Q Did you look at it at all in the preparation of Harry Claiborne's return?

A I had looked at the tax return.

Q You looked at it at that time, did you not, the spring of 1981?

A Sometime during that time frame.

Q Looked at it for the purpose of assisting yourself and Judge Claiborne in the preparation of the '80 return?

A I looked at it for the purpose of familiarizing myself with it to some degree prior to the time I turned it over to my paid tax preparer.

Q You weren't looking at it because you had nothing better to do, you were looking at it for the purpose of preparing the '81 return?

A As a form of information, yes.

Q Let me show you Government's Exhibit 2 and ask you if you would review the schedules which are attached to the back of the '78 return?

A Yes.

Q Does that not indicate to you that in 1978 he had written off all of the books and the equipment and the furniture from that law office that he closed in 1978?

A Well, we didn't write them off on the 1980. We gave some importance to them.

Q I'm asking you does that indicate that in 1978?

A This indicate to me that he had taken a prior loss on some assets of his business.

Q Does it indicate that he took a prior loss on all of the assets of his business?

A I don't think so.

Q Does it say complete library in that schedule?

A A complete library would certainly not consist of all the assets of a law practice.

Q Does it say complete library?

A I don't see where it says that.

Q Did you discuss with him whether or not there was any equipment or furniture or library books left that had not been written off? Did you ask him that question?

A I don't know that I did.

Q Did you assume that there were certain items that had not been written off in 1978?

A Yes. I assumed that.

Q Did you assume that even after you had read the 1978 return?

A Yes.

Q What information did Judge Claiborne give you to assist you in determining the value for the write off of his business?

A He gave me -- we had verbal conversations as to -- that was not -- the focal point of Judge Claiborne coming to my office was the law practice.

Q Please, Mr. Watson, what information did he give you to assist you in writing off his business or taking a loss on his business?

A We had a verbal discussion about the various factors of business including offers that he had received from two different attorneys that were interested in buying the property.

Q Let's a take them one at a time, if I may, Mr. Watson, and we'll get back to the others. He told you of offers he had received from attorneys that wanted to purchase his law office?

A That's correct.

Q And that was one of the pieces of information he was giving you in response to this April 6th that you have would be able to prepare his '81 return?

A That's correct.

Q Now who were the attorneys that made his offers to purchase his practice?

A Annette Quintana and James Brown.

Q Those were his associates at the time that he took the bench?

A They were his employees.

Q Now according to Judge Claiborne, what did these two attorneys offer him for the business?

MR. JOHNSTON: Objected to as hearsay.

THE COURT: It's not hearsay if it came from Judge Claiborne. I will admit it.

THE WITNESS: As I recall the figure was around $750,000, 700 or 750,000.

BY MR. SHAW:

Q According to Judge Claiborne was that offer that they had made to him in writing or was that an oral offer?

A I was under the impression that it was in writing since attorneys tend to conduct their business on that basis.

Q Did Judge Claiborne ever shown you this written $750,000 offer?

A No, sir, he did not.

Q Did he tell you that, that is did Judge Claiborne tell you of any other offers that he received in 1978 for the purchase of his law office?

A Yes, sir, he did.

Q What offers were those?

A Mr. John Manzoni, an attorney who I personally know in Las Vegas, dealt with Judge Claiborne and as I recall I discussed it with Mr. Manzoni myself.

Q Did Judge Claiborne tell you that Mr. Manzoni had made an offer for the purchase of his law office?

A He told me they had negotiated.

Q Judge Claiborne told you they had negotiated?

A That is correct.

Q According to Judge Claiborne what happened to those negotiations?

A Those negotiations fell through just a few days prior to the time he had to divest himself of his practice in order take the appointment to the bench.

Q According to Judge Claiborne what if anything did Manzoni offer for the purchase of his law office?

A I believe that --

MR. JOHNSTON: Excuse me, your Honor, this is hearsay upon hearsay. I'll object to this. We're getting into what Judge Claiborne said somebody else told him.

MR. SHAW: That's the same thing.

THE COURT: Whatever the conversation was between Mr. Watson and Judge Claiborne would be admissible.

THE WITNESS: As I recall the figure that they were nogotiating on for the law practicew was a half million dollars.

BY MR. SHAW:

Q Did Judge Claiborne tell you that Mr. Manzoni offered that?

A As I recall I talked to Mr. Manzoni.

THE COURT: Just answer the question.

BY MR. SHAW:

Q The answer is Yes, it was Mr. Judge Claiborne that gave you that information?

A I just said yes, sir.

Q Was there any other information that Judge Claiborne gave you to assist you in preparing the 1980 tax return with respect to taking a loss on his business?

A Since I have made many calculations many times in evaluating businesses, Judge Claiborne and I had discussions about the factors of a law firm that make it valuable. Would you like me to elaborate on that?

Q I'd like you to answer the question as to whether or not Judge Claiborne gave you any other information to assist you in that endeavor?

A We had verbal discussions.

Q And during those verbal discussions he gave you information to assist you; is that right

Q We discussed the various aspects of his practice, that's correct.

Q What information did he give you?

A As I recall we discussed the fact that he had a large amount of accumulated briefs, he had an extensive file of phone numbers. His phone had been listed under one number for several years which meant that a large segment of the population of Las Vegas knew who he was and knew his phone number. That he had a accumulated points and authorities and legal papers which an attorney of course can use over and over again as similar cases come up. We discussed the value of his cases that were pending at the time, not a dollar value but that they had a value, and we discussed accounts receivable.

Q So all of this information he gave you for purposes of helping assist you in preparing his return?

A That is right, we discussed all of those areas.

Q Did he also mention to you a contribution that he had made with some of the law books when he became a Judge?

A Yes. He had told me he had disposed of some of the assets of the firm.

Q Did he say that he donated those law books to the University of Hawaii?

A As I recall he donated them to a university and I think it was a university in Hawaii.

Q That information that Judge Claiborne gave you have was also factored by you in your determination of how to take a loss on his practice?

A That would have been a factor.

Q Was another factor that was going to be plugged into the loss of this business the money that he'd received in fees during the year 1980 that he had earned before he became a Judge?

A That was the accounts receivable.

Q You had discussed that with him also?

A Well, not particular dollar amounts. We had just discussed those things I told you as factors of value into the business as a going concern.

Q And accounts receivable was one of those factors?

A I believe that's correct.

Q Now approximately when did your office complete its work on the preparation of Judge Claiborne's 1980 tax return?

A That would have been sometime shortly prior to June the 15th, 1981.

Q Do you say that because Judge Claiborne's return is dated June 15th, 1981 on Government's Exhibit number 5?

A That's correct.

Q Your signature appears below his signature, does it not?

A That is correct.

Q Would you have signed it first, however?

A Yes, I would have signed it first.

Q After you sign it is there a stamp placed over the top of it?

A That's correct.

Q And that's Creative Tax Planning, Las Vegas, Nevada?

A That's correct.

Q So your office completed the work you believe on June 15th, 1981?

A Sometime on or before that date.

Q And you delivered that to Judge Claiborne at his chambers in Las Vegas?

A As I reflect back on that I delivered -- as I recall now I delivered a copy to him at his chambers.

Q Did you deliver a copy with the original?

A As I was thinking back on this I believe he came by and picked it up at the office and then I delivered the copy to him along with the invoice three or four days later.

Q You say thinking back on it because you have previously testified several times because you testified you delivered it to his chambers?

A That's correct, I delivered the return to his chambers and I had forgotten what I had delivered was a copy because I think he picked up the original in my office while I was out of town.

Q Did he sign the original with you there?

A Well, no. I was not in the office the day as I have reflected back on this. The day that he came in to pick it up I was not in the office.

Q When have you spoken to the defense most recently in this case?

A I've just spoken to the defense any number of times.

Q Did you speak with them this morning?

A Yes, I did.

Q With Judge Claiborne personally?

A No, I didn't.

Q With his attorney?

A Well, I mean we've had a little small talk.

Q When have you discussed your testimony most recently prior to today?

A I discussed my testimony with them last night and this morning.

Q For how much time last night?

A 45 minutes.

Q How about before yesterday, had you spoken with them a number of times in the past couple of months?

A No, I haven't spoken to them at all.

Q Is it based on your conversations with them that you now remember that you only delivered a copy to the chambers?

A It's based on my recollection of the events.

Q Recollection refreshed by conversations with them; is that right?

A I don't know that I can say it was refreshed by them or refreshed by my prior testimony or something through my prior records. As you may well appreciate I have spent a great deal of time researching my own records and my office about what I am to testify to here today.

Q What records do you have that you only recently discovered that tell you that you only gave a copy to Judge Claiborne?

MR. JOHNSTON: I'll objected. It misstates the witness's testimony. He didn't say he recently discovered records, your Honor.

THE COURT: I'm going to overrule the objetion. The witness is on cross-examination.

THE WITNESS: I'm afraid I really can't say, Mr. Shaw.

BY MR. SHAW:

Q So since there are no records that refresh your recollection it was left to the conversation with the defense that refreshed your recollection?

A Sometimes you remember things that you had previously forgotten.

Q So when you testified previous that you took the original to his chambers and went over it page by page with him, you meant you went over with him page by page in the copy?

A That's right, that would be correct.

Q And that was roughly a couple of days after he picked up the original from your office?

A Probably would be the same day the check was dated that he paid me.

Q Do you know the date that the check was dated?

A No, I don't.

Q How about your best present memory, would it have been two, three days after the original was signed?

A It seemed to me it was shortly after but I couldn't say if it was two days or a week.

Q So the copy that you went over with him, did the copy have both of your signatures on it?

A The copy that I went over with him?

Q The copy that you took to his chambers two or three days later.

A I'm sure it would have if, in fact, what I'm now recollecting he came to the office and signed it. The reason why he wouldn't have walked out with a copy is because I wouldn't have run it through my copy machine now.

Q You remember that he came over to your office to sign it there?

A I just told you that.

Q I'm wondering how you know that if you weren't there?

A It's a recollection that the thing was wrong. If he picked up the return, if I delivered a copy it would mean that the original was already gone so I would presume that the copy that I delivered to his chambers would more than likely have both signatures on it but I couldn't say. If you have a copy I'd be glad to look at it.

Q Was anyone else present with you in chambers when you and Judge Claiborne discussed the copy.

A Yes, as a matter of fact there was somebody else with me.

Q Who was that?

A A former business associate of mine, Linda Lamb.

Q She's no longer associated with you?

A No, sir, she's not.

Q About how long was that meeting that you had with Judge Claiborne?

A I couldn't say. It wasn't very long. If I recall I think he was involved in a trial and had just taken a short recess, so 15, 20 minutes.

Q You went over that with him, did you not?

A Yes. We glanced through the return.

Q Did he ask you any questions about it?

A No, sir.

Q Did he indicate to you that there was anything about that return that he did not understand?

A No, sir.

Q The return indicated I take it the size of the refund that he was going to get; is that correct?

A That's correct.

Q That item was on the copy that you were going over with him?

A I believe you have the document there in your hand.

Q Showing you Government's Exhibit number 5, again this is the 1980 return of Judge Claiborne; is that right?

A That's correct. Yes, this indicates a tax refund on it.

Q In what amount?

A $20,927.

Q Was it at that same meeting in chambers that Judge Claiborne gave you or wrote out a check to you for your services; is that right?

A I believe that was the same meeting.

Q You were first interviewed by investigators in this case on March 8th, 1983, were you not?

A That's about right.

Q Did you have a conversation shortly thereafter with Judge Claiborne about that meeting?

A Within a day or so.

Q So within a day or so of March 8th, 1983 you told Judge Claiborne that the IRS was investigating him for taxes?

A (Witness nods head affirmatively.)

Q Is your answer yes to that? I mean you nodded your head and the Court Reporter has to hear you.

A I don't know that. I told him they were investigating him for taxes. I just explained to him that they had been to my office asking him questions or asking me questions.

Q About Judge Claiborne's taxes?

A That's right.

MR. SHAW: That you, Mr. Watson.

THE COURT: Redirect?

MR. JOHNSTON: Just very brief, your Honor.

REDIRECT EXAMINATION

BY MR. JOHNSTON:

Q Mr. Watson, when you took the copy down to Judge Claiborne's chambers you say you think that was during a recess?

A I was under the impression that trial was going on at the time I took it down there because it seems to me it was like about 2:00 o'clock in the afternoon, it was in the afternoon and I think he was involved in a trial on that day.

Q Do you remember how long, approximately how long he was in the office with you?

A Couldn't have been any more than 15 or 20 minutes.

Q When you went in on that occasion did you go through the return page by page and explain each item and each page to him?

A No, sir, I did not.

Q Your testimony I think was that you glanced through the return?

A Right.

MR. SHAW: Objection, that's not what he said.

THE COURT: The objection is sustained. As to what his testimony was, the jury has heard his testimony.

BY MR. JOHNSTON:

Q To what extent did you discuss with Judge Claiborne on that occasion the specific items that appeared on the various pages of the tax return?

Claiborne you might say more or less to determine that all the pages were there. We looked through the tax return, we had some brief small discussion. As I recall he wrote the check and I left.

Q Did he ask you any questions at all about the return?

A No, sir.

MR. JOHNSTON: No further questions.

MR. SHAW: Recross, Mr. Shaw?

MR. SHAW: Thank you, your Honor.

RECROSS-EXAMINATION

BY MR. SHAW:

Q Mr. Watson, you recall testifying before the Federal Grand Jury in this building on June 8th, 1983, do you not?

A Yes, I recall that.

Q On page 163 for purposes of the record and at the bottom of page 162 were these questions and these answers, were these questions asked of you and these answers given by you?

"Q How much time did you spend in his chambers discussing the tax return with him?

A Well, we probably discussed the tax return about ten, 15 minutes and we were visiting. However, it came about that I called him to tell him the tax return was finished because I normally don't deliver and he asked me if I had ever been in the Judge's chamber and I and he said, 'Why don't you come on down and I'll give you a tour.'

Court was not in session so I delivered the return and I think I was there probably an hour.

Q What portion of that hour was spent discussing he tax return?

A I can cover one of those tax returns with you in ten, 15 minutes.

Q Did he leaf through it and glance through it?

A We went over each page. That's what we did here and this is what happened here, and that is what your refund is going to be and a general summary.

Q Did he sign it in front of you?

A I can't recall."

Q Do you recall giving those answers to those questions?

A Yes, I do.

MR. SHAW: Thank you.

FURTHER REDIRECT EXAMINATION

BY MR. JOHNSTON:

Q Mr. Watson, is your present recollection different from what it was when you were questioned before the Grand Jury in Reno?

A Yes, it is.

Q Is your present testimony your best present recollection?

A That's my best present recollection. I guess the significant thing was that we reviewed the tax return for about ten or 15 minutes.

MR. JOHNSTON: Thank you, sir. No further questions.

MR. SHAW: Nothing further.

THE COURT: Thank you Mr. Watson, you may stand down and be excused.

(The Witness was excused.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Mary E. Bell August 7, 1984

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